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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 255

GERHART EISLER, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The majority (R. 233–240) and dissenting (R. 241–245) opinions in the Court of Appeals are reported at 170 F. 2d 273. The opinions of the district court striking the affidavit of prejudice (R. 4–6) and denying motions for a new trial and in arrest of judgment (R. 205–208) are not reported.

JURISDICTION

The judgment of the Court of Appeals was entered June 14, 1948 (R. 246), and a petition for rehearing was denied July 17, 1948 (R. 250). The petition for a writ of certiorari was filed on August 31, 1948, within the time as extended by Mr. Chief Justice Vinson (R. 252), and was granted November 8, 1948 (R. 253). The juris-

diction of this Court is conferred by 28 U. S. C. 1254 (1). See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether the Resolution creating the Committee on Un-American Activities is Constitutional.

2. Whether the affidavit of bias and prejudice which was filed against the trial judge was timely and was legally sufficient to disqualify him.

3. Whether the court's conduct of the trial was fair.

4. Whether a "willful default" within the meaning of R. S. § 102 requires an evil or bad purpose in addition to deliberate and intentional conduct.

5. Whether the evidence was sufficient to show that petitioner was summoned to give testimony upon a matter committed to the Committee.

6. Whether petitioner was unlawfully denied the right to testify as to the contents of the statement he wished to make before being sworn.

7. Whether an alien involuntarily detained in this country on a transit visa is exempt from the duty to testify in a legislative inquiry.

8. Whether petitioner's arrest as an enemy alien gave him immunity from testifying as a prisoner of war.

9. Whether refusal to be sworn was a default under the statute.[1]

[1] This point is considered in note 5, p. 14, *infra*.

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STATUTES AND RESOLUTION INVOLVED

R. S. 102, as amended (2 U. S. C. 192), provides:

> Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

Rule XI (q) of the Rules of the House of Representatives, as amended by Section 121 (b) of the Legislative Reorganization Act of 1946, c. 753, 60 Stat. 812, 823, 828, and thereafter adopted by the House of Representatives (H. Res. No. 5, 80th Cong., 1st Sess., 93 Cong. Rec. 38) provides:

RULE XI

Powers and Duties of Committees

* * * * *

> The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time

investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpoenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

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Section 21 of the Judicial Code (28 U. S. C. (1946 ed.) (25)[2] provided, as of the time involved herein, as follows:

> Whenever a party to any action or proceeding, civil or criminal, shall make and file an affidavit that the judge before whom the action or proceeding is to be tried or heard has a personal bias or prejudice either against him or in favor of any opposite party to the suit, such judge shall proceed no further therein, but another judge shall be designated in the manner prescribed in section 24 of this title, or chosen in the manner prescribed in section 27 of this title, to hear such matter. Every such affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term of the court, or good cause shall be shown for the failure to file it within such time. No party shall be entitled in any case to file more than one such affidavit; and no such affidavit shall be filed unless accompanied by a certificate of counsel of record that such affidavit and application are made in good faith. The same proceedings shall be had when the presiding judge shall file with the clerk of the court a certificate that he deems himself unable for any reason to preside with absolute impartiality in the pending suit or action.

[2] Now 28 U. S. C. 144. Except for minor changes in arrangement and the phraseology the new section is identical.

STATEMENT

On February 27, 1947, petitioner was indicted in the United States District Court for the District of Columbia for a violation of R. S. 102 (*supra*, p. 3). The indictment (R. 214–215) charged that petitioner was summoned as a witness to give testimony before the House Committee on Un-American Activities upon matters of inquiry committed to it by Public Law No. 601, section 121, of the 79th Congress, and H. Res. 5 of the House of Representatives, 80th Congress (*supra*, pp. 3–4); that he appeared and was directed to be sworn to testify upon such matters; and that he thereupon refused to be sworn to testify, thus willfully committing a default.

Petitioner filed an affidavit of bias and prejudice to disqualify Judge Alexander Holtzoff, who had been designated to preside at the trial, in which he expressed his belief that Judge Holtzoff had a personal bias and prejudice against him and in favor of the Government. The grounds which petitioner asserted in support of this belief may be summarized as follows (R. 222–225):

1. At the hearing of the Committee on Un-American Activities, from which arose the charge of willful default by petitioner, a report by J. Edgar Hoover, Director of the F. B. I., of an investigation of petitioner's activities over many years was incorporated in the record. "This report indicates strong personal bias and preju-

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dice against me. * * * I believe that this investigation of my activities must have come to Justice Holtzoff's attention" during the period, prior to his becoming a Judge in September 1945, while he performed duties as Special Assistant to the Attorney General assigned to the F. B. I. "His duties were concerned especially with the investigation by the F. B. I. into the activities of aliens and communists, into both of which categories I fall." Judge Holtzoff had been legal adviser to the F. B. I. at the time the investigation of petitioner was commenced and continued as such until September 1945. "Upon information and belief, he figured in an important capacity in advising, aiding and determining the policy, nature, scope and objectives of the investigation directed against aliens and communists, which necessarily included myself."

2. In 1940 Judge Holtzoff had stated that on the basis of numerous official contacts with the F. B. I., sometimes almost daily, and his close personal friendship with J. Edgar Hoover, he had an excellent opportunity to observe the daily operations of the F. B. I. at close range.

3. "In connection with his duties as United States attorney assigned to the F. B. I., Justice Holtzoff advised J. Edgar Hoover as to steps and actions to be taken against alien communists, such as myself." He sponsored and supported legislation before the 77th Congress, 1st Session, permitting the deportation of aliens and their con-

finement in concentration camps upon proof of membership in the Communist Party. He appeared as the representative of the F. B. I. on many occasions and defended the F. B. I. in such a way that he was publicly and responsibly charged with distorting facts.

4. Judge Holtzoff had publicly expressed close friendship with and praise for J. Edgar Hoover, who "is and has been violently anti-Communist and, upon information and belief, has referred to Communists as 'vermin' and 'rats' and, on occasion has referred to Communism as 'red Fascism,' 'a malignant growth' and 'a virulent poison'." Judge Holtzoff had sponsored legislative and other activities that reflected those views of Mr. Hoover.

5. In 1940, Judge Holtzoff had defended the propriety of a compilation of intelligence concerning Communists and others whose political views differed from those deemed proper by the F. B. I.

The affidavit also recited that on or about May 20, 1947, immediately upon learning that Judge Holtzoff would preside at the trial, petitioner had communicated his disapproval to one of his counsel, A. J. Isserman, but a conference with co-counsel on the matter was delayed until May 27 because of Mr. Isserman's bereavement by the death of a brother. The affidavit was executed by petitioner in New York City on May 28 and was accompanied by the certificate of Carol King, one

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of his counsel of record, that the application and affidavit were made in good faith and not for the purpose of hindrance or delay. It was filed May 29 (R. 226).

On June 4, 1947, at the commencement of the trial, Judge Holtzoff struck the affidavit for the reasons that (1) it was filed too late; (2) the facts alleged did not meet the standard prescribed by the disqualification statute; and (3) the certificate accompanying the affidavit had not been made by a member of the bar of the District of Columbia [3] (R. 4–6).

At the trial the following evidence was adduced:

On January 23, 1947, the Committee on Un-American Activities issued a subpoena directing petitioner to appear before it on February 6, "there to testify touching matters of inquiry

[3] In *Berger* v. *United States*, 255 U. S. 22, 33, 35, this Court stated that one of the precautions against abuse of the affidavit of bias and prejudice lies in the requirement of an accompanying certificate of counsel, with the penalty of disbarment for connivance in a false affidavit. Carol King, who executed the certificate in the instant case, was a member of the New York bar and had been admitted *pro hac vice* to the bar of the trial court. Her certificate was considered insufficient because she did not bear the type of direct responsibility which is imposed upon members of the bar of the particular court in which the affidavit is filed (R. 5–6). Cf. *Currin* v. *Nourse*, 74 F. 2d 273 (C. A. 8); *Morse* v. *Lewis*, 54 F. 2d 1027, 1032 (C. A. 4), certiorari denied, 286 U. S. 557. David Rein, who had entered his appearance for petitioner, was a member of the bar of the trial court (R. 5), and was available, therefore, to execute the certificate.

committed to said Committee" (R. 22–23). The subpoena was served January 24, 1947 (R. 22). On February 4, petitioner was taken into custody as an enemy alien by representatives of the Immigration and Naturalization Service, acting pursuant to a Presidential Order (R. 82–83). While in such custody, he was taken to the Committee's hearing room on February 6 (R. 30), and the following colloquy ensued (R. 43–47):

> The CHAIRMAN.[4] Now, Mr. Stripling, call your first witness.
>
> Mr. STRIPLING. Mr. Gerhart Eisler, take the stand.
>
> Mr. EISLER. I am not going to take the stand.
>
> Mr. STRIPLING. Do you have counsel with you?
>
> Mr. EISLER. Yes.
>
> Mr. STRIPLING. I suggest that the witness be permitted counsel.
>
> The CHAIRMAN. Mr. Eisler, will you raise your right hand?
>
> Mr. EISLER. No. Before I take the oath——
>
> Mr. STRIPLING. Mr. Chairman——
>
> Mr. EISLER. I have the floor now.
>
> Mr. STRIPLING. I think, Mr. Chairman, you should make your preliminary remarks at this time, before Mr. Eisler makes any statement.

[4] The Chairman of the Committee was Representative J. Parnell Thomas (R. 13–14), and Messrs. Mundt and Rankin were members of the Committee. Mr. Stripling was the Committee's Chief Investigator (R. 26).

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The CHAIRMAN. Sit down, Mr. Eisler. Now, Mr. Eisler, you will be sworn in. Raise your right hand.

Mr. EISLER. No.

The CHAIRMAN. Mr. Eisler, in the first place, you want to remember that you are a guest of this Nation.

Mr. EISLER. I am not treated as a guest.

The CHAIRMAN. This committee——

Mr. EISLER. I am a political prisoner in the United States.

The CHAIRMAN. Just a minute. Will you please be sworn in?

Mr. EISLER. You will not swear me in before you hear a few remarks.

The CHAIRMAN. No; there will be no remarks.

Mr. EISLER. Then there will be no hearing with me.

The CHAIRMAN. You refuse to be sworn in? Do you refuse to be sworn in, Mr. Eisler?

Mr. EISLER. I am ready to answer all questions, to tell my side.

The CHAIRMAN. That is not the question. Do you refuse to be sworn in? All right.

Mr. EISLER. I am ready to answer all questions.

The CHAIRMAN. Mr. Stripling, call the next witness. The committee will come to order, please. What is the pleasure of the committee?

Mr. STRIPLING. Mr. Chairman, I think that the witness should be silent, or take the stand or be removed from the room,

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one or the other, until this matter is determined.

Mr. MUNDT. Mr. Chairman, suppose you ask him again whether he refuses to be sworn.

Mr. RANKIN. Not "sworn in," but to be sworn.

The CHAIRMAN. Mr. Eisler, do you refuse, again, to be sworn?

Mr. EISLER. I have never refused to be sworn in. I came here as a political prisoner. I want to make a few remarks, only 3 minutes, before I be sworn in, and answer your questions, and make my statement. It is 3 minutes.

The CHAIRMAN. I said that I would permit you to make your statement when the committee was through asking questions. After the committee is through asking questions, and your remarks are pertinent to the investigation, why it will be agreeable to the committee. But first you have to be sworn.

Mr. EISLER. That is where you are mistaken. I have to do nothing. A political prisoner has to do nothing.

The CHAIRMAN. Then you refuse to be sworn.

Mr. EISLER. I do not refuse to be sworn. I want only 3 minutes. Three minutes to make a statement.

Mr. CHAIRMAN. We will give you those 3 minutes when you are sworn.

Mr. EISLER. I want to speak before I am sworn.

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The Committee then voted to cite petitioner for contempt, following which petitioner's counsel, Carol King, asked to be heard. The Chairman, who deemed the request to be too late, did not recognize Mrs. King and directed that petitioner be removed from the room (R. 53). While Mrs. King distributed a mimeographed statement to newspapermen (R. 28), petitioner departed in the custody of the two Security Officers of the Immigration and Naturalization Service who had brought him to the hearing room (R. 30).

Petitioner testified in his own behalf at the trial that when the subpoena was served upon him, he prepared for his appearance before the Committee by purchasing railroad tickets to Washington, making hotel reservations, and consulting counsel concerning his rights at the hearing (R. 122; cf. R. 110, 111). He stated that he was prevented from proceeding according to plan because of his arrest by the immigration authorities (R. 123). He was brought to Washington by the immigration officers on the evening of February 5 (R. 125). The next morning Mrs. King, his counsel, conferred with him and advised him with respect to his forthcoming appearance before the Committee that day (R. 126).

Petitioner also testified that he had not refused to testify before the Committee but had insisted, as a condition precedent to such testimony, that he be permitted "to make a few remarks in connection with my arrest" (R. 130),

"because I had objection against the whole, what I considered unlawful proceedings of this Committee against my person" (R. 133).[5] Further testimony in respect of the nature of petitioner's intended remarks was given by his wife, who stated that petitioner had "prepared a small statement, or a few remarks, if you want to, which he wanted to make to protest his illegal arrest by the Un-American Activities Committee—instigated by the Un-American Activities Committee" (R. 112).

Except for the foregoing quoted testimony, the trial court excluded as irrelevant proffered evidence relating to the content of the remarks which petitioner had intended to make before the Committee. Petitioner's counsel stated to the court that this evidence, if admitted, would show that petitioner had intended to tell the Committee that he was a political prisoner, that his arrest had been procured by the Chairman and other members of the Committee, that he had no opportu-

[5] Petitioner argues (Br. 94) that a refusal to be sworn is not a "default" within the meaning of the statute. But any refusal to testify at all, as distinct from a refusal to answer particular questions, clearly constitutes a default under R. S. 102. Cf. *Townsend* v. *United States*, 95 F. 2d 352, 355–7, certiorari denied, 303 U. S. 664. The subpoena summoned petitioner to appear and testify (R. 23), and this meant testify in accordance with established practice, under oath (see R. S. 101, 2 U. S. C. 191). The refusal to be sworn (petitioner did not intimate that he wished to make an affirmation in lieu of an oath) was obviously a refusal to testify and a default in the obligation imposed by the subpoena.

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nity fully to consult counsel, and that the Committee had issued the subpoena in order to prosecute him because of his political views and to prevent his departure to Germany (R. 134–135, 138).

The trial court also excluded as irrelevant proffered evidence in support of the following contentions: (1) that petitioner was an alien in transit and, therefore, not subject to process of the Committee (R. 95–97, 115, 116, 118); (2) that his arrest, detention and transportation to the hearing were illegal (R. 82, 87, 89, 90, 100, 101–102, 108, 124); (3) that the Committee had been actuated by an ulterior motive in summoning him to testify since their purpose was not to elicit any information from him but to prevent his return to Germany and to punish him for his political beliefs (R. 102, 119); and (4) that he had relied upon advice of counsel in insisting upon the right to state his objections before taking an oath and testifying (R. 122, 126, 146).

Petitioner was found guilty and sentenced to imprisonment for one year and to pay a fine of $1,000 (R. 229). Upon appeal to the United States Court of Appeals for the District of Columbia Circuit, the judgment was affirmed, one judge dissenting (R. 233, 245).

SUMMARY OF ARGUMENT

I

A. Since petitioner refused to be sworn except on conditions he had no right to impose, the Committee never reached the point of questioning him, and he cannot assert that the Committee would have asked improper questions. Petitioner is entitled at most to challenge the Resolution from which the Committee derives its authority. The sole constitutional question is as to the validity of the Resolution, not whether the Committee is thought to be good or bad, or whether on other occasions it has acted fairly or unfairly. Furthermore, there is a serious question as to whether a witness who defaults is entitled to attack the validity of the power vested in the Committee.

B, C. Congress may unquestionably investigate in aid of its legislative powers. The Resolution establishing the Committee on Un-American Activities operates in a field in which legislation has been enacted and proposed, the control or disclosure of propaganda activities directed at the forcible overthrow of our form of government. And the Resolution declares that the investigation is to be such as will "aid Congress in any necessary remedial legislation."

D. The fact that an object of the Committee has been to reveal and publicize subversive activities does not establish that the inquiry is not also in aid of the legislative process. The purposes

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are not inconsistent. The Resolution on its face lies within the Congressional power, and inquiry into the motives of the members of the Committee is forbidden. Furthermore, Congress may legitimately investigate subjects within its constitutional jurisdiction for the purpose of informing the public. Administrative agencies frequently have been authorized to obtain and publicize information as a means of safeguarding the public interest. E. g., *Electric Bond and Share Co.* v. *Securities & Exchange Commission,* 303 U. S. 419. The Constitution does not deny Congress the power directly to use its own investigative authority to accomplish the same end.

E. The Resolution authorizing the investigation does not violate the First Amendment. This would seem self-evident, since the Resolution imposes no restraints, and does not restrict speech in any way. The possibility of an unfavorable public reaction to the testimony given and the fact that this may deter persons from expressing their views is not the type of thing against which the First Amendment protects. In any event, the First Amendment has never been thought to limit the power to elicit testimony for public purposes; the need for accurate information has always been thought to outweigh the possible interference with personal rights resulting from compelled disclosures.

F. The Resolution is not unconstitutional for indefiniteness. In the first place, there would

seem to be no requirement of definiteness as between Congress and its committees, as custom and practice demonstrate. And there is nothing indefinite in the requirements of the criminal statute applicable to a witness who defaults; a witness who appears can be advised as to the matter under inquiry so as to determine the pertinence of a question irrespective of the generality of the Resolution establishing the committee. In any event, the test as to definiteness of a congressional resolution establishing a committee would be a very broad one, not the rule applicable to criminal statutes. The Resolution here satisfies this standard. While considered in isolation, its words may not have precise meanings, there can be little question that they are calculated to authorize the Committee to seek information concerning propaganda activities which undermine the principle of a republican form of government.

G. The Resolution is not unlawful because some improper questions might be asked, but is valid if there can be proper inquiries. Such cases as *Winters* v. *New York*, 333 U. S. 507, and *Thornhill* v. *Alabama*, 310 U. S. 88, are inapposite, since the Resolution does not limit freedom of expression. We think it preposterous to assert that because an investigating body might ask some improper questions, although it has not done so, the investigation as a whole is un-

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constitutional, so that lawful inquiry into legitimate matters is barred.

II

A. The affidavit of bias and prejudice filed by petitioner was properly held insufficient on its face, since it does not show the personal bias or prejudice required by the statute. The prior official rulings of judges, it is established, do not show personal bias, and the same should be true of the prior official conduct of other public officers. Here the affidavit alleges that Judge Holtzoff during the period before he became a judge in the performance of duties as an official of the Department of Justice was concerned with F. B. I. investigations of aliens and Communists, that he advised as to steps to be taken against them, and that he figured in an important capacity in determining the policy of the investigations. This falls far short of showing personal prejudice against the class investigated. Nor do the allegations that petitioner was within the class or category investigated or against which action was taken state or mean that Judge Holtzoff took action against him personally or had any personal feeling against him. And the allegation that "this investigation of my activities must have come to Justice Holtzoff's attention," means only that the Judge heard of it or read it, not that he adopted or approved it. None of these averments show personal bias

or prejudice. The "personal hatred" referred to in petitioner's brief finds no support in the affidavit. If petitioner could have alleged as fact anything showing such hatred, he certainly would have done so. The dislike of Communism as a system is not personal bias or prejudice, as petitioner concedes.

B. The affidavit was untimely because delayed until after the Judge had ruled against petitioner on preliminary matters.

III

The court below correctly held that "willfully" in R. S. 102 means deliberately or intentionally, not necessarily with an evil or bad purpose. If this were not so, a person deliberately disobeying a congressional committee would gain complete immunity as long as he thought he had a right to do so. The nature of the conduct prescribed and the context in which "willfully" is used show that intentional disobedience was meant to be punished. See *Sinclair* v. *United States,* 279 U. S. 263, 299.

IV

The subpoena, the Chairman's testimony and the Resolution itself sufficiently establish that petitioner was summoned to testify on a matter committed to the Committee. *Sinclair* v. *United States, supra,* at 295–296. Petitioner cannot go behind the Resolution by questioning the members

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of the Committee as to their individual motives. *United States* v. *Morgan*, 313 U. S. 409, 422.

V

Petitioner was not unlawfully denied the right to testify as to the contents of his proposed statement. With respect to willfullness, the most that would be relevant would be that petitioner was seeking to assert preliminarily a legal objection, not the grounds of the objection in detail. He was allowed to offer evidence that he intended to say that he considered the proceedings against him unlawful. Detailed evidence in elaboration of his intended attack upon the political motives of the Committee and the legality of his arrest would have brought irrelevant matters before the jury. And even if he did want to make legal objections, when the Committee ordered him to be sworn regardless, his refusal was a deliberate and intentional refusal to testify, willful within the meaning of the statute, irrespective of what he intended to say.

Petitioner was not unfairly deprived by the Committee of the right to make a legal objection. He did not even intimate that that was what he wanted to do. And he had no constitutional right to make such an objection before being sworn. No judicial tribunal operates in such a manner.

VI

Petitioner received a fair trial. The numerous adverse rulings of which he complained reflect

patience on the part of the Judge in the face of persistent attempts to adduce irrelevant evidence, after he had excluded identical evidence, in order to confine the trial to the issues which he considered pertinent. The Court did not take an undue part in the examination of witnesses. And there was no showing that the Court went too far in rebuking petitioner's counsel, or that this prejudiced petitioner's case. Whether the various objections to the trial court's conduct urged by petitioner are read singly or together, they do not show that petitioner did not receive a fair trial. Although the trial may not have attained the ideal of judicial decorum in which friction between counsel and the court is wholly absent, no evidence of prejudice to the petitioner is perceptible.

VII

Petitioner was not immune as an enemy alien or an enemy in transit from the duty to testify before the Committee.

ARGUMENT

I

THE COMMITTEE ON UN-AMERICAN ACTIVITIES WAS EMPOWERED TO REQUIRE PETITIONER TO TESTIFY.

A. THE NATURE OF THE CONSTITUTIONAL ISSUE

Petitioner's first contention is that the Committee on Un-American Activities is unconstitutional. Identical arguments have been rejected by

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the Court of Appeals for the Second Circuit in *United States* v. *Josephson*, 165 F. 2d 82, and by the Court of Appeals for the District of Columbia in *Barsky* v. *United States*, 167 F. 2d 341, in both of which certiorari was denied. 333 U. S. 838, 334 U. S. 843. (A petition for rehearing in the *Barsky* case is presently pending.) We submit that those decisions were clearly correct.

1. Before taking up the constitutional argument, however, it is important that the precise scope of the question confronting this Court be defined. In this case, as in *Josephson*, petitioner refused to testify before the Committee. Here he refused to be sworn except on conditions which he had no right to impose. Accordingly, the Committee never reached the point of questioning him. The petitioner therefore is not in a position to assert that the Committee would have propounded improper questions, so long as under the authorizing Resolution the Committee could have asked some questions which would have been within its constitutional authority. As this Court stated in dealing with a similar contention in *McGrain* v. *Daugherty*, 273 U. S. 135, 160:

> * * * we are not now concerned with the right of the Senate to propound or the duty of the witness to answer specific questions, for as yet no questions have been propounded to him. He is asserting—and is standing on his assertion—that the Senate is without power to interrogate him, even

if the questions propounded be pertinent and otherwise legitimate—which for present purposes must be assumed.

Accordingly, this case must be treated as if the Committee had intended—as, for all we know, it did—to ask petitioner whether to his knowledge the Soviet Government was disseminating in the United States propaganda designed to induce persons to overthrow the Government of the United States by force and to substitute for our constitutional system a dictatorship of a group taking orders from abroad.[6]

The sole constitutional issue, therefore, is whether the Committee can lawfully ask any question.[7] And this depends upon whether the Resolution creating the Committee, now embodied in the Legislative Reorganization Act of 1946, 60 Stat. 828, and House Rule XI (q) is totally unconstitutional on its face.

The constitutional question thus relates only to the Committee's power. Accordingly, we are not here concerned with any particular questions which it might ask, with the Committee's conduct, or with the manner in which the Commit-

[6] In the *Josephson* case the Court of Appeals stated that "the appellant could, for example, have been asked whether he knew of propaganda activities designed to bring about the immediate destruction of the Government by violence and the question, as he clearly would have known, would have been pertinent." 165 F. 2d at 88.

[7] There is a serious question as to whether petitioner is entitled to raise even this point. See pp. 25–29, *infra*.

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tee has treated other witnesses. As is well known, among those who have criticized the Committee for its tactics and procedures have been the President and the Attorney General. The issue in this case, however, is not whether, in our opinion or in the Court's opinion, the Committee has been a good one or a bad one, or whether on some occasions it may have treated witnesses or others fairly or unfairly, or have acted partially or impartially.[7a] If members of a Congressional committee abuse the powers which are granted them, the remedy lies with their constituents or with Congress as a whole—and there is good reason to believe, with respect to this very Committee, that such forces have not been wholly ineffective. But a possible—or a past—misuse of a power lawfully granted does not warrant a denial of the power's existence. Nor does anything which has happened in the questioning or treatment of other witnesses warrant an assumption that a particular witness who refused to answer questions at all would be questioned unlawfully.

2. As we have seen, in this case petitioner has refused to testify before the Committee except on conditions which he had no right to impose.

[7a] "If alternatives are no inquiry at all, or an inquiry that is abused, then the choice must be for the latter." Lindsay Rogers, *The American Senate*, page 209 (1926). See also Ehrmann, *The Duty of Disclosure in Parliamentary Investigation*, 11 Chicago L. Rev. 1, 117 (1943–44).

We think it questionable whether such a witness has standing to attack the constitutionality of the Resolution creating the Committee.

Petitioner was convicted for violation of R. S. 102, which is undoubtedly constitutional. That statute provides for the punishment of every person summoned to testify upon a matter upon inquiry before a committee of either House who willfully makes default. The purpose of this provision was to compel persons to appear. The orderly dispatch of Congressional business requires that even witnesses who claim that a committee is unlawfully created not ignore its summons, but that they appear before it and make their objection in a proper manner. Of course R. S. 102 would not apply to a refusal to appear before a group of persons, even of members of Congress, merely purporting to be a legislative committee without any legal authority. But insofar as a committee is in fact established by a House of Congress, with all the formal indicia of Congressional authority, R. S. 102 contemplates that witnesses obey the committee's process irrespective of whether the Resolution defining the committee's power is ultimately held to be unconstitutional.* The witness could, it is assured, urge at the proper time that a specific

* Here the Committee on Un-American Activities is created by House Rule X, 60 Stat. 822, the validity of which is not and cannot be challenged. Its powers are defined in House Rule XI (q), 60 Stat. 828, which petitioner assails.

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question was beyond the authority of the committee because the committee lacked constitutional basis for asking any questions. This provides adequate protection, and still allows the business of Congress to proceed.

This interpretation of R. S. 102 is supported by several analogies. Persons may be punished for defrauding governmental operations under statutes which are unconstitutional. *United States* v. *Kapp*, 302 U. S. 214; *Kay* v. *United States*, 303 U. S. 1. In each of these cases the penal provisions were clearly valid, and the question was whether Congress intended them to protect against fraud agencies unconstitutionally created. Thus, in *Kay* v. *United States*, 303 U. S. 1, where the defendant sought to upset a conviction based upon making false statements to the Home Owners' Loan Corporation, upon the ground that Congress had no constitutional authority to create the Home Owner's Loan Corporation, the Court stated (pp. 6–7):

> "It might as well be said that one could embezzle moneys in the United States Treasury with impunity if it turns out that they were collected in the course of invalid transactions. * * * Congress was entitled to protect the Government against those who would swindle it regardless of questions of constitutional authority as to the operations that the Government is conducting. Such questions cannot be raised by those who make false claims against

> the Government." *United States* v. *Kapp*, 302 U. S. 214, 217–218; *Madden* v. *United States*, 80 F. (2d) 672. While the instant case is not one of conspiracy to obtain money from the United States, but one of false statements designed to mislead those acting under authority of the Government, the principle involved is the same. Apart from any question of the validity of the other provisions of the Home Owners' Loan Act, Congress was entitled to secure protection against false and misleading representations while the Act was being administered, and the separability provision of the Act (§ 9) is clearly applicable.

The quotation here is apt, and indeed the present case is a stronger one. The separability clause invoked in the *Kay* case simply left the penal provisions of the Home Owners' Loan Act itself operative, notwithstanding the possibility of unconstitutionality of the remainder of the Act. In this case, the penal provisions (R. S. 102) are independent of the congressional authorization for the existence of the Committee.

Similarly, in *Blair* v. *United States*, 250 U. S. 273, the Court held that a witness before a grand jury cannot avoid testifying on the ground that the grand jury has no authority over the subject matter of the investigation. "* * * he is not entitled to challenge the authority of the court or of the grand jury, provided they have a *de facto* existence and organization. * * * And, for the

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same reasons, witnesses are not entitled to take exception to the jurisdiction of the grand jury or the court over the particular subject-matter that is under investigation" (p. 282).

In *United States* v. *United Mine Workers,* 330 U. S. 258, the Court held that obedience to a court order was required even where the court lacked jurisdiction. The same reasons suggest that a witness must obey a Congressional committee subpoena irrespective of what is ultimately decided as to the validity of the investigating committee's powers.

McGrain v. *Daugherty,* 273 U. S. 135, which also involved the failure of a witness to testify, did not arise under R. S. 102; accordingly the Court was not called upon to, and did not, consider this problem.

Although we feel that there is serious question whether petitioner may raise the issue, in the remainder of this Point we shall assume that he can challenge the validity of the Resolution pusuant to which the Committee acts.

We turn then to the only question which this Court may consider in that connection—the constitutionality of the Resolution under which the Committee acts.

B. THE SCOPE OF THE POWER OF CONGRESS

The power of either branch of Congress to institute investigations and to compel testimony with a view to the possible exercise of the legis-

lative function is indisputable. *McGrain* v. *Daugherty*, 273 U. S. 135, 171–175; *United States* v. *Norris*, 300 U. S. 564, 573. The necessity for the power exists in the very nature of the legislative function. As this Court stated in *McGrain* v. *Daugherty*, 273 U. S. at 175:

> A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed.

The cases establish, and it is not denied, that a congressional committee may seek facts by compulsion, when necessary, in aid of the power of Congress to legislate.[9] This means that Congress may seek to elicit all the facts bearing on a subject within its constitutional authority. It is not limited to inquiring into those facts which show the need for legislation, into those matters which it has power to regulate or prohibit. The power to

[9] Congress may, of course, also inquire into facts which might lead to amendment of the Constitution or to impeachment.

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investigate is necessarily broader than the substantive power which may be exerted by the investigating agency. *Oklahoma Press Publishing Co.* v. *Walling,* 327 U. S. 186; *Endicott Johnson Corp.* v. *Perkins,* 317 U. S. 501. It is equally important for Congress to be informed as to facts which would show legislation to be undesirable and unnecessary, and as to facts which show that constitutional standards, such as the clear and present danger test with respect to freedom of speech, are or are not satisfied. Congress obviously cannot tell whether there is need or constitutional basis for regulating the statements of which "propaganda" may consist until it learns what those statements are, and what the intent and effect may be.

C. THE RESOLUTION IS IN AID OF THE POWER OF CONGRESS TO LEGISLATE

The Resolution establishing the Committee on Un-American Activities (which, since its embodiment in the Legislative Reorganization Act of 1946, is also a statute) clearly satisfies the constitutional test.

The Committee on Un-American Activities has been authorized to conduct investigations of—

> (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin

and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress *in any necessary remedial legislation.* [Italics supplied.]

The purpose of the provision is apparent from its face—to secure information of a specified kind in order that any necessary remedial legislation may be enacted.

There is a well recognized field for legislation with respect to propaganda activities, notwithstanding the existence of constitutional limitations. From the information which the Committee receives, it conceivably could conclude that certain propaganda activities have reached the stage where they present a "clear and present" danger of bringing about a substantive evil, such as the overthrow of our form of government by means inconsistent with the Constitution, and that remedial legislation is necessary. Cf. *Dunne* v. *United States,* 138 F. 2d 137 (C. A. 8), certiorari denied, 320 U. S. 790. The Committee may learn that foreign governments are carrying on propaganda warfare in our midst with a view to undermining our constitutional principles through aliens who enter our shores. Such information could result in the amendment of our immigration laws to close even more tightly our boundaries to classes of persons believed to be engaged in such activities. The data disclosed by the investi-

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gation might show the necessity for increasing our internal security forces, and legislation and appropriations for this purpose could be initiated. Or the inquiry might disclose, negatively, that appropriations for the investigation of activities of foreign governments should not be decreased—or that they could be.

Illustrative of legislation which might be based upon the information adduced under the Resolution are the statutes regulating correspondence with foreign governments (cf. 35 Stat. 1088, as amended, 47 Stat. 132, 18 U. S. C. (1946 ed.) 5, now 18 U. S. C. 953), imposing safeguards against seditious conspiracy (cf. 35 Stat. 1089, 18 U. S. C. (1946 ed.) 6, now 18 U. S. C. 2384), prohibiting measures undermining the morale of the armed forces (54 Stat. 670, 18 U. S. C. (1946 ed.) 9, now 18 U. S. C. 2387), authorizing government radio broadcasts to foreign countries (Pub. No. 402, 80th Cong.), prescribing qualifications for government employment, requiring the registration of foreign agents (cf. 53 Stat. 1244, 22 U. S. C. 601, 611) and organizations carrying on certain types of propaganda (cf. 54 Stat. 1201, 18 U. S. C. (1946 ed.) 14, 15, now 18 U. S. C. 2386). See *Josephson* case, 165 F. 2d at 90.

As the Court of Appeals for the Second Circuit stated in the *Josephson* case (p. 90):

> Information gained by a committee of this nature, provided its search for the truth may not be frustrated by such ob-

structive tactics as those employed by the appellant, might well aid Congress in performing its legislative duties, viz., in deciding that the public welfare required the passage of new statutes or changes in existing ones or that it did not. Cf. Landis, *supra,* at pages 208–10.[10] Some of these duties are imposed not only by the principle that the Government shall preserve itself, but, of course, by express provisions in the Constitution. Thus among the purposes of the Constitution, as expressed in the Preamble, are to "insure domestic Tranquility," to "provide for the common defense," to "promote the general welfare," and to "secure the Blessings of Liberty." Art. 1, sec. 8 gives Congress the power to "provide for the common Defense," "to raise and support Armies," "to provide and maintain a Navy," "to make Rules for the Government and Regulation of the land and naval Forces," and to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing powers." Art. IV, Sec. 4 provides that "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion" and on application "against domestic Violence."

From its inception in 1938 until it became a standing committee in 1945, the Committee on

[10] Landis, *Congressional Power of Investigation,* 40 Harv. L. Rev. 153 (1926).

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Un-American Activities was a special committee and proposed legislation was not referred to it. Consequently, although this does not mean that its inquiry did not result in legislation, it is difficult fully to appraise the results of its efforts. The Act of October 17, 1940, c. 897, 54 Stat. 1201, 18 U. S. C. (1946 ed.) 14–17, now 18 U. S. C. 2386, known as the "Voorhees Act," requiring the registration of domestic organizations carrying on subversive political and civilian military activities was introduced by a member of the Special Committee. The non-Communist affidavit requirement contained in Section 9 (h) of the Labor Management Relations Act, 1947, 61 Stat. 136, rested in large part on facts disclosed in the hearings of the Committee on Un-American Activities.[11] The Mundt-Nixon Bill (H. R. 5852, 80th Cong., 2d Sess.), which sought to curb Communist activity by a variety of measures, including the registration of "Communist-front" organizations, originated in the Committee on Un-American Activities and passed the House of Representatives. Other bills on the same general subject were referred to the Committee on Un-American Activities[12] and to other committees of the House and Senate.[13] They demonstrate that Congress contemplated and actually engaged in

[11] See brief for appellee in *American Communications Association* v. *Douds*, No. 336, pp. 24–25, 32–34.

[12] See Appendix A, *infra*, p. 108–109.

[13] See Appendix B, *infra*, pp. 110–111.

the exercise of its law-making powers in connection with the subjects under consideration by the Committee on Un-American Activities.

The power to conduct an investigation with a view to possible legislation cannot be measured, however, by the scarcity or the abundance of legislative recommendations emanating from the Committee or induced by its efforts. Some of the effects may have been negative in character. Congress may be dissuaded from changing other laws or appropriations, or persuaded that for practical or constitutional reasons no legislation on a subject should be enacted.

The only matter of consequence, however, is whether the subject of the investigation is such that the legislative processes might be aided by the facts disclosed. The facts amply demonstrate that the Resolution pursuant to which the Committee on Un-American Activities operates was designed to give such aid. The Resolution on its face declares that the investigation is to be such as will "aid Congress in any necessary remedial legislation."

D. THE RESOLUTION IS NOT UNCONSTITUTIONAL BECAUSE ONE OF THE COMMITTEE'S PURPOSES WAS TO EXPOSE SUBVERSIVE AND UN-AMERICAN ACTIVITIES

Petitioner contends that the Resolution is unconstitutional because the Committee's purpose is to publicize, to expose, subversive and un-American activities. The excerpts from the reports of

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the Committee and statements of its members quoted by petitioner (Br. 21–24) do indicate that this was *one* of the objects of the Committee. But it does not follow that the Resolution establishing the Committee is unconstitutional.

We shall show that it is entirely proper for Congress to investigate for purposes of disclosure within the field of its constitutional jurisdiction. But even assuming the contrary, petitioner has no valid complaint.

1. In the first place the existence of an intent to combat subversive activities by publicity does not mean that an inquiry is not also in aid of legislation. A disclosure, for example, that a certain organization was led by persons who were subservient to a foreign government would both tend to open the eyes of the public as to the nature of the organization and be relevant in determining whether legislative regulation of foreign agents were desirable.

In the present case petitioner did not let the inquiry proceed far enough to permit the Committee to ask him any questions. As long as there are some questions which the Committee might have asked in aid of legislative functions, as there clearly were, petitioner cannot assume that the Committee intended to question him only on other matters. Here we are concerned with the Resolution on its face (see p. 24, *supra*), and the fact (if it be a fact) that the members of the Committee or of Congress might have some

other or even an improper motive does not invalidate a legislative act such as the Resolution here involved, which is constitutional on its face. Compare *Sonzinsky* v. *United States*, 300 U. S. 506, 513–514; *Goesaert* v. *Cleary*, 335 U. S. 464, 467; *Veazie Bank* v. *Fenno*, 8 Wall. 533, 548; *McCray* v. *United States*, 195 U. S. 27, 56–59; *United States* v. *Doremus*, 249 U. S. 86, 93–94; *Magnano Co.* v. *Hamilton*, 292 U. S. 40, 44, 45.

Even more clearly, the co-existence of a proper and improper purpose by those entrusted with the administration of a Congressional Resolution does not vitiate legislative action. Throughout our history one of the most common criticisms of Congressional committees has been that they were being used by sponsors or members for political or personal reasons distinct from the ostensible aim of aiding the legislative functions of Congress. Cf. Dimock, *Congressional Investigating Committees* (Johns Hopkins University Studies, Series XLVII, No. 1, 1929), p. 164. In the two most recent leading cases in this field, *McGrain* v. *Daugherty*, 273 U. S. 135, and *Sinclair* v. *United States*, 279 U. S. 263, similar attacks were made upon the motives of a Congressional committee. Sinclair argued that the purpose of a question put to him was to aid the prosecution in pending litigation and was therefore improper. But this Court stated (p. 295):

> It may be conceded that Congress is without authority to compel disclosures for

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> the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees, to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits.
>
> The record does not sustain appellant's contention that the investigation was avowedly not in aid of legislation. He relies on the refusal of the committee to pass the motion directing that the inquiry should not relate to controversies pending in court, and the statement of one of the members that there was nothing else to examine appellant about. But these are not enough to show that the committee intended to depart from the purpose to ascertain whether additional legislation might be advisable. It is plain that investigation of the matters involved in suits brought or to be commenced under Senate Joint Resolution 54 might directly aid in respect of legislative action.

The *Sinclair* case involved refusal to answer a specific question. In the *McGrain* case, as in this one, there was a failure of the witness to appear at all. The Court indicated clearly there that the purpose of Congress was to be determined from the terms of the authorizing Resolution. See 273 U. S. at pp. 170, 172, 175–178. The Court stated (p. 178):

> The only legitimate object the Senate could have in ordering the investigation

was to aid it in legislating; and we think the subject-matter was such that the presumption should be indulged that this was the real object. An express avowal of the object would have been better; but in view of the particular subject-matter was not indispensable. In the *Chapman* case, where the resolution contained no avowal, this Court pointed out that it plainly related to a subject-matter of which the Senate had jurisdiction, and said "We cannot assume on this record that the action of the Senate was without a legitimate object". * * * In *People* v. *Keeler*, 99 N. Y. 463, * * * the court said (pp. 485, 487): * * * "We are bound to presume that the action of the legislative body was with a legitimate object if it is capable of being so construed, and we have no right to assume that the contrary was intended."

(Pp. 175–176)

The contention is earnestly made on behalf of the witness that this power of inquiry, if sustained, may be abusively and oppressively exerted. If this be so, it affords no ground for denying the power. The same contention might be directed against the power to legislate, and of course would be unavailing. We must assume, for present purposes, that neither house will be disposed to exert the power beyond its proper bounds, or without due regard to the rights of witnesses.

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2. Since the Resolution was predicated on the need for information for legislative purposes, it is unnecessary to decide whether Congress has authority to investigate for the sole purpose of bringing information to public attention. There is considerable support, however, among students of Congressional power for the view that the "informing function" of Congress in itself would have brought the investigation within its constitutional competence.[14] Potts, *Power of Legislative Bodies to Punish for Contempt,* 74 U. Pa. L. R. 691, 811; Galloway, *Investigative Function of Congress,* 21 Am. Pol. Sc. Rev. 47, 62; Cousens, *Investigations Under Legislative Authority,* 26 Georgetown L. J. 905, 918; McGeary, *The Developments of Congressional Investigative Power,* p. 104. Woodrow Wilson expressed the opinion that

> It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the

[14] It has been suggested that the function of informing the public is implied and inherent in the legislative purpose. Landis, *supra,* 40 Harv. L. Rev. at 205, 206, n. 227. A representative democracy relies upon the creation of a favorable public opinion for the acceptance and thus the enforcement of new legislation.

> country must be helpless to learn how it is being served; and unless Congress both scrutinize these things and sift them by every form of discussion, the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct. The informing function of Congress should be preferred even to its legislative function.[18]

We submit that Congress may under the Constitution undertake investigations for the purpose of publicizing information at least so long as the matters to be disclosed are related to a substantive congressional power. It is settled that Congress in the exercise of its regulatory power may authorize an administrative agency to receive and publicize information. *Electric Bond & Share Co.* v. *Securities & Exchange Commission*. 303 U. S. 419. In the *Electric Bond & Share Co.* case, this Court observed, in relation to the registration provisions of the Public Utility Holding Company Act, that "the requirement of information is in itself a permissible and useful type of regulation" (p. 439). This method of protecting the public interest by requiring the disclosure of information in fields subject to the power of Congress has been employed in a num-

[18] Wilson, *Congressional Government*, as quoted by Frankfurter in *Hands Off the Investigations*, 38 New Republic 329, 330.

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ber of other statutes. E. g., newspapers using the mails, 37 Stat. 533, 39 U. S. C. 233 (*Lewis Publishing Co.* v. *Morgan*, 229 U. S. 288); Securities Act of 1933. 48 Stat. 74, 15 U. S. C. 77a; Food, Drug and Cosmetic Act, 52 Stat. 1040, 1041, 21 U. S. C. 321; Alien Registration Act, 54 Stat. 673, 8 U. S. C. 452; registration of lobbyists, 60 Stat. 839, 2 U. S. C. 261; registration of foreign agents, 52 Stat. 631, 22 U. S. C. 611; registration of certain subversive organizations, 54 Stat. 1201, 18 U. S. C. (1946 ed.) 14–17, now 18 U. S. C. 2386.

Indeed, the principle of disclosure has been advanced by persons zealous to protect civil liberties as the best method of dealing with the Communist problem in this country. The Report of the President's Committee on Civil Rights (*To Secure These Rights*, U. S. Govt. Printing Office, 1947) concluded that (pp. 52, 53):

> The principle of disclosure is, we believe, the appropriate way to deal with those who would subvert our democracy by revolution or by encouraging disunity and destroying the civil rights of some groups.
>
> * * * * *
>
> The federal government * * * ought to provide a source of reference where private citizens and groups may find accurate information about the activities, sponsorship, and background of those who are active in the market place of public opinion.

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We set forth the relevant section of the Report in full in the note below.[16] See also the *Josephson* case, 165 F. 2d at 89.

[16] "As we have said, one of the things which totalitarians of both left and right have in common is a reluctance to come before the people honestly and say who they are, what they work for and who supports them. Those persons in our own country who try to stir up religious and racial hatreds are no exception. They understand that the vicious doctrines which they advocate have been morally outlawed in America for more than a century and a half. This Committee is as eager to guarantee their civil rights as those of the people they attack. But we do not believe in a definition of civil rights which includes freedom to avoid all responsibility for one's opinions. This would be an unwise and disastrous weakening of the democratic process. If these people wish to influence the public in our national forum of opinion they should be free to do so, regardless of how distasteful their views are to us. But the public must be able to evaluate these views. Exactly how much anonymous, hate-mongering or other subversive literature there is we do not know. The amount of such matter fluctuates greatly from time to time. At the present, according to several witnesses who appeared before the Committee, many of those who spread racial and religious prejudices have "gone underground." As recently as 1940, however, a study by the staff of the Senate Committee on Campaign Expenditures revealed that one-third of the election propaganda in the campaign of that year was completely anonymous and one-half was partially and inadequately identified as to source and sponsorship. Moreover, the Committee reported that the anonymous material included "the most virulent, dishonest and defamatory propaganda." Congress has already taken the first step to remedy this inadequacy by amending the election laws to forbid the distribution of anonymous compaign literature.

"The principle of disclosure is, we believe, the appropriate way to deal with those who would subvert our democracy by revolution or by encouraging disunity and destroying the

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Inasmuch as propaganda emanating from foreign sources may affect the foreign relations of the United States, the national defense, and the

civil rights of some groups. We have considered and rejected proposals which have been made to us for censoring or prohibiting material which defames religious or racial minority groups. Our purpose is not to constrict anyone's freedom to speak; it is rather to enable the people better to judge the true motives of those who try to sway them.

"Congress has already made use of the principle of disclosure in both the economic and political spheres. The Securities and Exchange Commission, the Federal Trade Commission and the Pure Food and Drug Administration make available to the public information about sponsors of economic wares. In the political realm, the Federal Communications Commission, the Post Office Department, the Clerk of the House of Representatives, and the Secretary of the Senate—all of these under various statutes—are required to collect information about those who attempt to influence public opinion. Thousands of statements disclosing the ownership and control of newspapers using the second-class mailing privilege are filed annually with the Post Office Department. Hundreds of statements disclosing the ownership and control of radio stations are filed with the Federal Communications Commission. Hundreds of lobbyists are now required to disclose their efforts to influence Congress under the Congressional Reorganization Act. In 1938, Congress found it necessary to pass the Foreign Agents Registration Act which forced certain citizens and aliens alike to register with the Department of Justice the facts about their sponsorship and activities. The effectiveness of these efforts has varied. We believe, however, that they have been sufficiently successful to warrant their further extension to all of those who attempt to influence public opinion.

"The ultimate responsibility for countering totalitarians of all kinds rests, as always, with the mass of good, democratic Americans, their organizations and their leaders. The federal government must set an example of careful adherence to the highest standards in guaranteeing freedom of opinion

obligation of the United States to guarantee to each state a "Republican Form of Government" and protection against both "Invasion" and "domestic Violence," we think it clear that Congress has power under the Constitution to adopt a program of publicity and disclosure as a public safeguard against subversive propaganda which Congress does not wish to, and perhaps cannot, prohibit. We believe that Congress can accomplish this result by means of substantive legislation entrusting to the Executive Branch of the Government investigatory powers for informational purposes. If this is so, it cannot be said that the Constitution denies Congress power to carry out the investigatory function itself. The choice of means is clearly for Congress, and nothing in the doctrine of Separation of Powers requires that this type of inquiry be delegated to the Executive.

E. THERE IS NO INTERFERENCE WITH FIRST AMENDMENT RIGHTS

Petitioner argues at length that the authority granted to the Committee is in violation of the First Amendment. It is said that the Resolution permits an inquiry into sensitive matters which are protected by the First Amendment

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and expression to its employees. Beyond that it ought to provide a source of reference where private citizens and groups may find accurate information about the activities, sponsorship, and background of those who are active in the market place of public opinion." (Pp. 51–53.)

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and imposes a limitless restraint on mere thought and opinion. And elaborate arguments are presented which seek to emphasize the evils which result from imposing restraints on freedom of thought and speech. But this entire line of argument is designed to confuse what is self-evident. The Resolution imposes no restraints. After testifying before the Committee a witness can believe, say and do the same things as he could before. The Resolution permits investigation only; it does not impose any limits on freedom of speech. Indeed, it does not permit the Committee to control even the propaganda activities which are the subject matter of its investigations. Since there is no interference with First Amendment rights, the Resolution cannot be in violation of the Amendment.

Petitioner's reference to the "clear and present danger test" (Br. 39–40) demonstrates the incongruity of his argument that use of the power to investigate may violate the First Amendment. Although that test may govern the power of Congress to regulate speech, it cannot limit the power of Congress to inquire. For Congress would be unable intelligently to determine whether or not there was a clear and present danger warranting legislation unless it could obtain evidence as to the circumstances in which there was no such danger as well as in which there was.

Petitioner argues that the First Amendment is violated because the Committee's disclosures ex-

pose persons to adverse public sentiment, and that Congress has no power to publicize that "certain doctrines are officially regarded as dangerous" (Br. 37). Freedom of speech is said to be not only restrained but destroyed (Br. 38) by fears of adverse publicity, which discourage persons from expressing opinions which may be distasteful to the Committee. By describing such effects as "censorship" and restrictions upon speech, petitioner endeavors to bring the case within the doctrine of decisions forbidding actual legislative interference with First Amendment freedoms. And petitioner insists that "the First Amendment limits *all* the powers of Congress", the power of inquiry as well as the substantive powers (Br. 42).

We do not, of course, deny that the First Amendment applies to all the powers of Congress. But whether and to what extent it limits the exercise of the legislative power of inquiry depends on what the Amendment means.

As we have seen, the Resolution does not restrain speech in any way, nor does it authorize the Committee to do so. That should be an end of the problem, for the Committee has not asked petitioner any questions and all that is before this Court is the validity of the resolution itself. But if we assume that disclosures before the Committee will result in unfavorable publicity and discourage persons from subjecting themselves to the risk of similar unfavorable public

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reaction to the expression of their views, it does not follow that the First Amendment is in any way violated.

For it was not this sort of indirect consequence of public disclosure with which the First Amendment was concerned. Such indirect consequences may result from any public investigation. The Amendment does not provide, however, that Congress may not inform the public; it provides that "Congress shall make no law * * * abridging the freedom of speech or of the press". It was designed to prevent attempts by law to curtail freedom of speech. But it was not intended to protect persons against unfavorable public opinion, even though such opinion may be stimulated by disclosures made to or by an investigating body. None of the familiar cases cited by petitioner (Br. 36–43) even remotely so suggests. Nor does the possibility that persons may voluntarily refrain from expressing their views in order to avoid a hostile public reaction mean that any law has abridged their freedom of speech.

Whether or not the Amendment embodies a freedom to be silent generally, as is urged, it certainly does not accord a privilege to be silent when called upon to testify before a lawful body of inquiry. For no investigation would be constitutional if that were the case. And, obviously, the First Amendment itself does not make unlawful the otherwise proper use of compelled

testimony even if the inquiry does interfere with the alleged freedom to be silent.

The same conclusion may be reached by a different route, if it be assumed that such indirect effects are of the sort to which the First Amendment might apply. First Amendment rights are not absolute. They have never been thought to preclude the compulsory giving of testimony. The power to compel testimony for public purposes—legislative as well as judicial—is essential to the existence and operation of organized society. Not infrequently, compelled disclosures may bring persons into disfavor or disrepute, may result in loss of employment or other manifestations of individual or popular ill-will. And there is, of course, even the more drastic penalty of imprisonment for refusal to testify.

But the need for accurate first-hand information as a basis for governmental action has been deemed to outweigh the interference with personal rights resulting from compelled disclosures. And this is so even if the rights are thought to be within the field reached by the First Amendment. For First Amendment rights must be balanced against other legitimate and essential needs of the community.

This Court has noted that even where freedom to criticize the courts was involved, "reviewing courts are brought in cases of this type to appraise the comment on a balance between the desirability of free discussion and the necessity

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for fair adjudication, free from interruption of its processes". *Pennekamp* v. *Florida*, 328 U. S. 331, 336. Insofar as compulsory testimony is concerned, the interest of privacy is clearly overbalanced by the need for an efficient exercise of judicial power. "That efficiency should be accorded judicial power and withheld from legislative power, is contrary to the dictates of public policy as well as inimical to a theory of separate but equal governmental powers". Landis, *Congressional Power of Investigation*, 40 Harv. L. Rev. 153, 219 (1926). When the necessities of the legislative process are contrasted, not with any direct restraint upon the right to speak one's views, but with the direct deterrent resulting from fear of a public opinion aroused by the disclosure, there can be even less question as to how the interests should be balanced. For the absence of any legal impediment to speech makes the assumed interference with First Amendment rights very slight indeed.

F. THE RESOLUTION IS NOT UNCONSTITUTIONAL FOR INDEFINITENESS

Petitioner argues that the resolution is unconstitutional because such phrases as "subversive and un-American propaganda" and "the principle of the form of government as guaranteed by our Constitution" have no meaning. It is contended that this leaves the Committee free to investigate whatever expressions it chooses, and

affords the witness no guidance to the pertinence of questions asked him within the meaning of the criminal statute (R. S. 102, *supra*, p. 3) punishing default or refusal to answer "any question pertinent to the question under inquiry".

Here again it is to be noted that no question has been put to petitioner. He is in no position to claim that any question is not pertinent to the inquiry. He has been indicted under the other phrase in R. S. 102, for willfully making default. As the Court of Appeals declared in the *Josephson* case (165 F. 2d at 87–88):

> But this point is not available to the appellant. By refusing to testify at all he refused to answer any questions that were pertinent as well as those that were not and thus he was not put to the decision he argues could not have been made, viz., whether or not any particular question was pertinent. We may, therefore, put aside his contention that the language of the authorizing statute is so vague that a witness before the committee has no criteria to indicate in doubtful cases what questions asked would have the requisite pertinence. Here it is enough to say, and the appellant as much as concedes, that some questions could and perhaps would have been put that were pertinent to the inquiry, no matter how vague were these criteria.

1. *There is no requirement of definiteness for resolutions empowering legislative committees to*

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investigate. But we think that there is a more basic answer to petitioner's contention. In order to determine whether the resolution is unconstitutionally vague it is necessary, first, to determine the criterion which governs Congress in establishing committees with investigatory powers.

We start with the proposition that no provision of the Constitution—and nothing in its basic structure—limits the powers of inquiry which Congress may bestow on any committee, so long as it does not go beyond the sphere over which Congress itself has authority. There is no doctrine of separation of powers as between Congress and its committees. If it were feasible, Congress or one of its Houses could conduct an investigation itself, without delegating its authority to any committee. In the beginning, the Senate had only 26 members, less than some present committees,[11] and only slightly more than the 21 members on the present Senate Committee on Appropriations. 60 Stat. 815. Indeed, R. S. 102 still refers to matters "under inquiry before either House * * * or any committee of either House."

Such a Congressional inquiry could be conducted without any underlying statute or resolution defining its scope. The inquiry would neces-

[11] Most House committees have 25 or 27 members. The Committee on Appropriations consists of 43 members. 60 Stat. 822.

sarily be limited to facts relating to subjects which Congress had constitutional authority to investigate. It would be necessary to show that a particular question pertained to such a subject, but the absence of a resolution describing the subject to be investigated would not render the whole proceeding void.

The Committees sit as arms of Congress, not as subordinate agencies. And the necessities of their relationships to Congress require that the subjects over which they have jurisdiction be broadly defined. All regular standing committees—at least in the Senate (Legislative Reorganization Act, 1946, Sec. 134, 60 Stat. 831–832)—may make "investigations into any matter within its jurisdiction".[10] The Committees on Interstate and Foreign Commerce, for example, have jurisdiction over "interstate and foreign commerce generally", *inter alia* (60 Stat. 817, 826); the Committees on Agriculture over "agriculture generally", *inter alia* (*id.*, at 815, 823); the Committees on the Armed Services over "common defense generally", *inter alia* (*id.*, at 815, 824);

[10] Investigations are authorized in the House by special resolution. But these resolutions frequently authorize the standing committees merely "to conduct thorough studies and investigations relating to matters coming within the jurisdiction of such committee". See, for example, House Resolution 141, 80th Cong., 1st sess., printed at 93 Cong. Rec. 5057, which uses the above language in authorizing the Committee on Armed Services to conduct an investigation; House Resolution 93, printed in 93 Cong. Rec. 5058.

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and the Committees on Appropriations simply over "appropriation of the revenue for the support of the Government" (*ibid.*)—which might permit inquiry into every subject for which Congress does or could be asked to appropriate money. These definitions of the powers of Congressional committees are far broader than the standards of definiteness required in criminal statutes. They are far broader than the standards applicable when the Congress is delegating authority to the Executive Departments or agencies. No administrative body could be empowered merely to regulate "interstate or foreign commerce generally". Cf. *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495. And yet no one has ever suggested that these committees are unconstitutional, or that they lack power to investigate, because of the sweep of their authority.

But petitioner argues that the rule as to definiteness of criminal statutes becomes applicable in a prosecution for refusing to testify before a committee, that R. S. 102 and the statute or resolution embodying the Committee's authority must be read together as an integrated criminal law, and that if the authorizing resolution so read does not satisfy criminal law standards of definiteness it must be deemed unconstitutional in so far as compelling testimony from witnesses is concerned. Acceptance of this argument would impose upon the power of Congress to create committees re-

quirements as to specificity entirely inconsistent with practice and history, and without any constitutional basis. For the long exercised power to establish committees with general investigating authority would be futile if such committees could not prosecute witnesses who would not testify.

No such limitation is essential to protect witnesses against essential unfairness or infringement of their right not to be questioned about matters outside the constitutional authority of Congress. We turn to the criminal statute, R. S. 102, to see whether it gives a witness or prospective witness an "ascertainable standard of guilt" (*Winters* v. *New York,* 333 U. S. 507, 515), without regard for the generality of the statute or resolution by which a committee is created.

There is no problem as to this with respect to the portion of R. S. 102 involved in this case. It provides that "every person who, having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House * * * or any committee of either House of Congress, willfully makes default" shall be guilty of a misdemeanor. The ingredients of the crime are that the witness must be summoned to give testimony, that it be on a matter under inquiry, and that he "willfully makes default". There is nothing indefinite

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about any of these factors insofar as the witness is concerned. The statute does not leave it to the witness to determine the nature of the matter under inquiry; he need only know that the summons is to testify on a matter which is under inquiry. And this is a reasonable means of exercising the power of Congress to investigate. The defaulting witness is not thereby deprived of his right to defend against prosecution on the ground that the whole proceeding is unconstitutional, but that does not go to the definiteness of the statutory obligation.

Nor is the second clause of R. S. 102—which has no application to the present case—which punishes refusal "to answer any question pertinent to the question under inquiry", made unconstitutionally indefinite by the generality of the statute or resolution creating the investigating committee. If we assume that the witness must have a basis for judging the pertinence of the "question under inquiry" in order to determine whether he must answer, it does not follow that such information is obtainable only from the resolution creating the committee. A witness might not be aided by reference to "the common defense generally" or to "interstate and foreign commerce generally". The precise question under inquiry in an investigation or in a portion of it would normally be obvious at the time of the question. A witness who honestly had doubts could ask the committee before deciding whether

to answer a particular question. Elaboration on this point seems unnecessary, since petitioner refused to testify at all and was not indicted for violating this part of R. S. 102.

2. *The Resolution is sufficiently definite.*—In any event, even if we assume that resolutions, rules or laws creating legislative committees must satisfy some standard of definiteness, the Resolution here would be valid. If any such requirement exists, the standard of definiteness required must be a broad one, not the rule applicable to criminal statutes. What the test should be is not entirely clear; at most it would require that the charter of a committee have some general meaning, not that all of the terms employed be words of precision.

In this period of propaganda warfare there is a knowable content in the statutory word "propaganda." It is not an indefinite concept which includes everything. Webster's *New International Dictionary* (2d ed., 1939) defines it as follows:

> a. Any organized or concerted group, effort, or movement to spread a particular doctrine or system of doctrines or principles; as, the need of a more active social *propaganda.*
>
> b. Now, often, secret or clandestine dissemination of ideas, information, gossip, or the like, for the purpose of helping or injuring a person, an institution, a cause, etc.; as, the victim of the opposing party's

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propaganda; belligerent *propaganda* among neutrals. * * *

A scheme or plan for the propagation of a doctrine or system of principles; as, the cleverly worked-out *propaganda* of the enemy.

Similarly it is difficult to believe that anyone would read the phrase "the principle of the form of government as guaranteed by our Constitution," as meaning anything other than the republican form of government, which, too, has specific content. "* * * the distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves." *In re Duncan,* 139 U. S. 449, 461. The phrase is narrower than "the principles of the Constitution" discussed in *Schneiderman* v. *United States,* 320 U. S. 118.[19]

[19] The majority in the *Schneiderman* case did not find it necessary to define these principles, but accepted the Government's definition for purposes of the decision (320 U. S. at 140). The dissent of Chief Justice Stone defined the principles as follows: "* * * among them are at least the principle of constitutional protection of civil rights and of life, liberty and property, the principle of representative government, and the principle that constitutional laws are not to be broken down by planned disobedience. I assume also that all the principles of the Constitution are hostile to dictatorship and minority rule; and that it is a principle of our Constitution that change in the organization of our gov-

The words "subversive and un-American" which qualify "propaganda," when read in their context, are descriptive of the propaganda activities which are subject to investigation. While considered in isolation these words may have broad and different meanings to different people, there can be little question that in their context they are calculated to authorize the Committee to seek information concerning propaganda activities which undermine the principle of the republican form of government.

In the *Josephson* case the Court of Appeals for the Second Circuit stated (165 F. 2d at 88):

> At the very least the language of the authorizing statute permits investigating the advocacy of the idea that the Government or the Constitutional system of the United States should be overthrown by force, rather than modified by the peaceful process of amendment of the Constitution set forth in Article V.

There is nothing in this case to indicate that anything other than such information would have been sought from petitioner.

In the view we take of the statute, it marks off a specified area of conduct for investigation and so informs the world. This, we submit, is all that is required.

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ernment is to be effected by the orderly procedures ordained by the Constitution and not by force or fraud." (320 U. S. at 181.)

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6. THE RESOLUTION IS NOT UNLAWFUL BECAUSE SOME IMPROPER QUESTIONS MIGHT BE ASKED, BUT IS LAWFUL IF THERE CAN BE VALID INQUIRIES

The basic conflict between our position and the petitioner's is this: We maintain that the Resolution is valid on its face, and that in any event it cannot be held void so long as any parts of it, or any inquiries under it, would be constitutional. Petitioner, on the other hand—while apparently not denying that some constitutional questions might be asked under the Resolution—contends that if the Resolution on its face might permit *some* inquiries not within the constitutional power, it must fall in its entirety.

It is unnecessary to cite cases for the proposition that "the cardinal principle of statutory construction is to save and not to destroy." *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 30. This principle underlies both the rule that a law should be given that construction which will preserve its constitutionality and the doctrine that valid and separable portions and applications of laws may stand even though other portions or applications might be deemed unconstitutional. *Jones & Laughlin* case, *supra; Electric Bond and Share Corp.* v. *Securities and Exchange Commission,* 303 U. S. 419; *Dorchy* v. *Kansas,* 264 U. S. 286; Cooley, *Constitutional Limitations* (1868), pp. 180–181.

As against these basic principles petitioner invokes *Thornhill* v. *Alabama,* 310 U. S. 88,

Winters v. *New York,* 333 U. S. 507; *Stromberg* v. *California,* 283 U. S. 359, and *Herndon* v. *Lowry,* 301 U. S. 242, each of which deals with a criminal statute punishing some method of expression. The *Winters* case, most recently decided, declared that (509–510):

> * * * It is settled that a statute so vague and indefinite, in form and as interpreted, as to permit within the scope of its language the *punishment of incidents fairly within the protection of the guarantee of free speech* is void, on its face, as contrary to the Fourteenth Amendment. *Stromberg* v. *California,* 283 U. S. 359, 369; *Herndon* v. *Lowry,* 301 U. S. 242, 258. A failure of *a statute limiting freedom of expression* to give fair notice of what acts will be punished and such a statute's inclusion of prohibitions against expressions, protected by the principles of the First Amendment, violates an accused's rights under procedural due process and freedom of speech or press. [Italics supplied.]
>
> * * * * *

(p. 512):

> On its face, the subsection here involved violates the rule of the *Stromberg* and *Herndon* cases, *supra,* that statutes which include prohibitions of acts fairly within the protection of a free press are void.

And the *Thornhill* case states (310 U. S. at 98):

> * * * Where regulations of the liberty of free discussion are concerned, there

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> are special reasons for observing the rule that it is the statute, and not the accusation or the evidence under it, which prescribes the limits of permissible conduct and warns against transgression. *Stromberg* v. *California,* 283 U. S. 359, 368; *Schneider* v. *State,* 308 U. S. 147, 155, 162–163. Compare *Lanzetta* v. *New Jersey,* 306 U. S. 451.

These statements of the rule upon which petitioner relies are sufficient to show that it is inapplicable here. For the Resolution empowering a Congressional committee to take testimony is obviously not "a statute limiting freedom of expression." It does not punish anyone for expressing his views or doing anything else within the purview of the First Amendment. It does not "regulate the liberty of free discussion." We have dealt with these matters at pages 46–51, *supra,* and further elaboration seems unnecessary here.

In sum, we think it preposterous to assert that because an investigating body might ask some improper question, although it has not yet done so, the investigation as a whole is unconstitutional, so that lawful inquiry into legitimate matters is barred. But that is petitioner's position.

H. THE RESOLUTION AUTHORIZES INQUIRY INTO MATTERS OF GRAVE PUBLIC CONCERN

Finally, it has been urged that the resolution authorizes Congress to investigate the private

affairs of private citizens. It seems sufficient
answer this in the language of the Second C
cuit in the *Josephson* case (165 F. 2d at 88–89

> * * * This subject was sufficien
> broad in scope so that the informati
> sought to be gained for the use of
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> quate, but was nevertheless confined
> certain types of propaganda about
> potency of which there can be little dou
> If such propaganda takes the form of,
> example, advocacy of the overthrow of
> Government by violence, it is rightfu
> called "Un-American" and a sensible
> gard for the self-preservation of the nati
> may well require its investigation, with
> view to the enactment of whatever remed
> legislation may be needed or to the amen
> ment thereof. One need only recall
> activities of the so-called fifth columns
> various countries both before and duri
> the late war to realize that the Uni
> States should be alert to discover and d
> with the seeds of revolution within its
> And if there be any doubts on the sc
> of the power and duty of the Governm
> and Congress to do so, they may be
> solved when it is remembered that one
> the very purposes of the Constitution its
> was to protect the country against dan
> from within as well as from without.
> The Federalist, Nos. II–X. Surely, m
> ters which potentially affect the very s
> vival of our Government are by no mea
> the purely personal concern of anyone.

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II

THE AFFIDAVIT OF BIAS AND PREJUDICE DID NOT REQUIRE THE DISQUALIFICATION OF THE TRIAL JUDGE

A. THE AFFIDAVIT DID NOT SHOW PERSONAL BIAS OR PREJUDICE

Section 21 of the Judicial Code (formerly 28 U. S. C. 25, now 28 U. S. C. 144) provides:

> Whenever a party to any action or proceeding, civil or criminal, shall make and file an affidavit that the judge before whom the action or proceeding is to be tried or heard has a personal bias or prejudice either against him or in favor of any opposite party to the suit, such judge shall proceed no further therein, * * *. Every such affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term of the court, or good cause shall be shown for the failure to file it within such time.

This section has been authoritatively construed in *Berger* v. *United States,* 255 U. S. 22, as meaning that the judge to whom an affidavit of bias is submitted must take the allegations of fact contained therein as true, and determine only the "legal sufficiency" of the affidavit.[20] In ref-

[20] Judge Holtzoff recognized this to be the rule, and accordingly based his ruling on the facts alleged by petitioner (R. 4–6, 207–8), even though he knew them to be untrue, stating (R. 6):

erence to the requirement that the affidavit contain a statement of fact and reasons, the Court stated, *inter alia* (p. 33–34):

> Of course the reasons and facts for the belief the litigant entertains are an essential part of the affidavit, and must give fair support to the charge of a bent of mind that may prevent or impede impartiality of judgment.

P. 35:

> We are of opinion, therefore, that an affidavit upon information and belief satisfies the section and that upon its filing, *if it show the objectionable inclination or disposition of the judge,* which we have said is an essential condition, it is his duty to "proceed no further" in the case. [Italics supplied.]

The *Berger* opinion did not discuss what was meant by *personal* bias or prejudice. It held, however, that allegations and statements of the judge showing strong personal antipathy toward a class of which defendants were members was sufficient.[21] This means that disqualification re-

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"Having thus disposed of the affidavit, I think it would be appropriate for me to state that I have no recollection of ever hearing of the defendant in this case until I saw his name in the newspapers several months ago."
See also R. 208.

[21] It was alleged that Judge Landis had said to a defendant in another case: "One must have a very judicial mind, indeed, not to be prejudiced against the German Americans in this country." (255 U. S. at 28.)

"You are of the same mind that practically all the German-Americans are in this country, and you call your-

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sults if such an attitude is displayed toward a class or group to which the defendant belongs. But it does not do away with the requirement that the bias or prejudice be personal.

The cases establish that a manifested attitude as to the merits of the controversy is insufficient, and that prejudice must be based upon something other than the judge's rulings in the case [22] or in other cases.[23]

Furthermore, it is clear that a general antipathy toward such classes as law violators would not be "personal." Probably every judge would be prejudiced against thieves, swindlers, murderers, and advocates of forcible overthrow of the government. Similarly, a dislike of a philosophy such as Communism or Nazism, which is counter

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selves German-Americans. Your hearts are reeking with disloyalty. I know a safeblower, he is a friend of mine, who is making a good soldier in France. He was a bank robber for nine years, that was his business in peacetime, and now he is a good soldier, and as between him and this defendant, I prefer the safeblower." (255 U. S. at 29.)

[22] *Ex parte American Steel Barrel Co.*, 230 U. S. 35; *Refior* v. *Lansing Drop Forge Co.*, 124 F. 2d 440 (C. A. 6), certiorari denied, 316 U. S. 671; *Scott* v. *Beams*, 122 F. 2d 777 (C. A. 10), certiorari denied, 315 U. S. 809; *Ryan* v. *United States*, 99 F. 2d 864 (C. A. 8), certiorari denied, 306 U. S. 635; *Minnesota & Ontario Paper Co.* v. *Molyneaux*, 70 F. 2d 545 (C. A. 8); *Morse* v. *Lewis*, 54 F. 2d 1027 (C. A. 4), certiorari denied, 286 U. S. 557; *Craven* v. *United States*, 22 F. 2d 605 (C. A. 1), certiorari denied, 276 U. S. 627.

[23] *Ryan* v. *United States*, 99 F. 2d 864 (C. A. 8), certiorari denied, 306 U. S. 635; *Sacramento Suburban Fruit Lands Co.* v. *Tatham*, 40 F. 2d 894 (C. A. 9), certiorari denied, 282 U. S. 874.

to the principles of our constitutional system, cannot be regarded as a personal bias, as petitioner concedes.[24] It might be difficult to find a judge not possessing such an aversion, and yet this has not prevented Communists or Nazis from being treated fairly, as this Court's own decisions attest.[25] The statute obviously does not mean that such an attitude should be regarded as personal bias.

One other observation would seem pertinent in view of the nature of petitioner's allegation. The mere fact that a public official has worked—even in a law enforcement capacity—on any of the above subjects, would not show personal bias and prejudice against members of the classes involved. Public officials, except perhaps those in the highest echelons, have their tasks assigned to them, and the performance of their assignments does not necessarily express their personal views. Judges who come from public life, as many do, cannot be said to be *personally* prejudiced in favor of the activities which they have previously undertaken, or against those at whom those activities were directed.

We now turn to the allegations of fact in the affidavit of bias and prejudice (R. 222–225).

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[24] "A distinction is to be made, in this respect, between an aversion to Communism as a system and a hatred of those who advocate it" (Br. 63).

[25] *Schneiderman* v. *United States*, 320 U. S. 118; *Klapprott* v. *United States*, No. 42, this Term; *Baumgartner* v. *United States*, 322 U. S. 665.

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We ask only that it be read fairly—not, as petitioner implies, technically. But we think it appropriate to point out that the affidavit was undoubtedly drawn by experienced counsel, and that on its face it shows a straining to the utmost to state facts favorably for petitioner.

The affidavit at the beginning and at the end (R. 222, 225) alleges personal bias and prejudice generally. These general conclusions obviously do not constitute a sufficient averment of facts or reasons to satisfy the statute.

The affidavit states that petitioner is a member of the German-Communist movement, and that a report on his activities by J. Edgar Hoover, Director of the Federal Bureau of Investigation, was placed in the record of the hearings of the Committee on Un-American Activities out of which this case arose, that this report indicates strong personal bias and prejudice against him (R. 222), and that Mr. Hoover is violently anti-Communist (R. 224). The affidavit itself reveals that this report by Mr. Hoover to the Committee occurred over a year after the termination of Judge Holtzoff's connection with the Department of Justice and his elevation to the bench (R. 222). The affidavit alleges that, while in the Department of Justice, Judge Holtzoff was admittedly a close personal friend of Mr. Hoover, and was associated with him in sponsoring legislative and other activities reflecting Mr. Hoover's "intemperate" views. These allegations are ob-

viously only background; they clearly do not show personal bias on the part of Judge Holtzoff.

The affidavit alleges that Judge Holtzoff while in the Department of Justice was *assigned* as legal adviser to the F. B. I. (R. 223–224), and that he was concerned with the investigation of Communists, including petitioner. These allegations read as follows:

> 1. "His duties were concerned especially with the investigation by the F. B. I. into the activities of aliens and communists, into both of which categories I fall. I believe that this investigation of my activities must have come to Justice Holtzoff's attention during the period while he performed such duties" (R. 223).
>
> 2. "In connection with his duties as United States attorney assigned to the F. B. I., Justice Holtzoff advised J. Edgar Hoover as to steps and actions to be taken against alien communists, such as myself." He sponsored legislation for the deportation and incarceration of aliens and appeared in defense of the F. B. I. (R. 223).
>
> 3. "Justice Holtzoff was legal advisor to the F. B. I. at the time the investigation of me was commenced and continued as such until September, 1945. Upon information and belief, he figured in an important capacity in advising and aiding and determining the policy, nature, scope and objectives of the investigation directed

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against aliens and communists, which necessarily included myself." (R. 224.)

a. These averments charge, in the first place, that Judge Holtzoff in the performance of his official duties was concerned with F. B. I. investigations of aliens and Communists, that he advised as to steps to be taken against them, and that he figured in an important capacity, in determining the policy of the investigation. But the fact that a public official, in carrying out the official duties assigned to him, participates in an investigation, even importantly, does not show *personal* prejudice against the class being investigated. And the same is true as to the allegation in (2) above that Judge Holtzoff, before his elevation to the bench, advised Mr. Hoover as to steps to be taken against alien Communists. The affidavit itself charges such action by Judge Holtzoff only in his previous official assignment in the Department of Justice. There is no allegation of any statement or act showing personal hostility comparable to the vehement expressions of ill-will and enmity toward German-Americans which were attributed to Judge Landis. We do not think that the possible antipathy to an ideology arising from such official activity would be as personal as that of a judge ruling adversely to a party in a former trial or in an earlier stage of the same proceeding, and yet that is not grounds for disqualification.

Such attitude or disposition of mind as is imputed to Judge Holtzoff from the mere fact of giving advice in the performance of his duty as a lawyer may be compared with that of a member of Congress, who, in his official capacity, initiates and advocates legislation. In the absence of any actual expression of personal prejudice or hatred against those whose activities he seeks to regulate, the mere fact of participation in the preparation of legislation does not show such personal bias or prejudice on his part against each member of that group as to impugn his impartiality of judgment in the event he subsequently sits as a judge in a case involving such an individual. We think that the practice to which Mr. Justice Jackson adverted in his opinion of December 6, 1948, in *Hirota* v. *MacArthur,* 335 U. S. 876, 879, when he said "* * * it is not the custom of this Court that a Justice disqualifies from passing on a particular case because he actively participated as a Senator or Representative in making the law under which it was tried" indicates that such participation does not manifest personal bias or prejudice.

b. We now turn to the allegations designed to show that Judge Holtzoff was prejudiced against the petitioner himself. The averments are (1) that Judge Holtzoff was adviser to the F. B. I. at the time "the investigation of me was commenced and continued" (R. 224); (2) that the "investigation" was of "aliens and communists, *into both of*

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which categories I fall" (R. 223); that "his duties related to steps and actions to be taken against alien communists, *such as myself"* (R. 223), and that the investigation of alien communists "*necessarily included myself"* (R. 224); and (3) "I believe that this investigation of my activities must have come to Justice Holtzoff's attention" (R. 223).

The allegation as to Justice Holtzoff being the F. B. I. adviser at the time of the investigation does not, of course, prove bias. The three allegations that petitioner was within the class or category investigated or against which action was considered or taken do not state or mean that Judge Holtzoff took action against him personally or had any personal feeling against him. At most, the Judge was advising as to the class or category into which petitioner fell, which "necessarily included" him.

The strongest allegation of personal knowledge is that "this investigation of my activities must have come to Justice Holtzoff's attention"—and we have no doubt that petitioner would have stated it more strongly if he possibly could. But this, on its face, means only what it says, that petitioner believes that the investigation *must have* come to the judge's attention. This would mean at most that the Judge had heard of the investigation, not that he took part in it—that the report came to his attention. There is no statement that the Judge studied it, adopted it, approved it, or took any action whatsoever con-

cerning it. Indeed, there is no allegation that it actually did come to the judge's attention.[26]

These averments read separately or together do not show personal bias or prejudice toward petitioner or toward Communists as a class.

In his brief, petitioner states (p. 59) that the affidavit in summary says:

> (1) As legal adviser to the F. B. I., Justice Holtzoff participated in investigations of aliens and Communists, including a specific F. B. I. investigation of the appellant (an alien and a Communist) which resulted in a report that he is a foreign agent. (2) Justice Holtzoff has a personal hatred of Communists, as shown by his sponsorship of a bill for the deportation of alien Communists and their incarceration in concentration camps and by his admiration for and close friendship with J. Edgar Hoover.

As appears from the preceding discussion, the first point is an inaccurate over-statement. The second point, Judge Holtzoff's "personal hatred for Communists," the theme underlying most of petitioner's subsequent discussion, is not contained in the affidavit at all; it is merely petitioner's unsupported characterization, an attempt to make the affidavit resemble the allegations in the *Berger* case. If petitioner could have alleged as fact

[26] The fact that it did not actually come to the Judge's attention (R. 6, 208) indicates the reason for petitioner's failure to make a more positive statement.

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anything showing personal hatred, he certainly would have done so. And the affidavit itself—although not the description of it in petitioner's brief—fails to allege any such facts.

If the affidavit here should be construed to assert that Judge Holtzoff had acquired the conviction that Communism embodies a subversive and illegal political program and that legislative and other governmental measures should be adopted to combat it, we nevertheless maintain that this would not show *personal* bias or prejudice against petitioner. A judge may preside at the trial of a person, and conclude that the person is a menace to a society; he would nevertheless not be disqualified from presiding at the subsequent trial of the same person on other charges. *Craven* v. *United States,* 22 F. 2d 605, 607–608 (C. A. 1), certiorari denied, 276 U. S. 627; *Henry* v. *Speer,* 201 Fed. 869, 872 (C. A. 5); *Parker* v. *Oil Co.*, 13 F. 2d 497 (D. Mass.). "Frequently, in the disposition of cases, both civil and criminal, a judge is called upon to form and express an opinion upon a matter or issue which may come before him in a subsequent proceeding arising out of the same state of facts. The courts are practically unanimous in the view that neither the forming nor the expression of such a conclusion, under such circumstances, disqualifies a judge in the subsequent matter, particularly where the issue of fact in the latter proceeding is to be

determined by a jury." *Slayton* v. *Commonwealth*, 185 Va. 371, 376."

Probably all judges have established attitudes (based upon their experience, environment and interests), concerning the nature, objectives and treatment of Communists. "If, however, 'bias' and 'partiality' be defined to mean the total absence of preconceptions in the mind of the judge, then no one has ever had a fair trial and no one ever will." *In re J. P. Linahan, Inc.*, 138 F. 2d 650, 651 (C. A. 2). This opinion goes on (p. 652):

> More directly to the point, every human society has a multitude of established attitudes, unquestioned postulates. Cosmically, they may seem parochial prejudices, but many of them represent the community's most cherished values and ideals. Such social preconceptions, the "value judgments" which members of any given society take for granted and use as the unspoken axioms of thinking, find their way into that society's legal system, become what has been termed "the valuation system of the law." The judge in our society owes a duty to act in accordance with those basic predilections inhering in our legal system (although, of course, he

[27] Cf. *Freudunreich* v. *Mayor and Council*, 114 N. J. L. 290, which held that a councilman is not disqualified on the ground of personal prejudice from voting to dismiss a policeman even though previously he had prosecuted the policeman on the same charge.

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> has the right, at times, to urge that some of them be modified or abandoned). The standard of dispassionateness obviously does not require the judge to rid himself of the unconscious influence of such social attitudes.

In rejecting a charge of bias against an administrative official, this Court observed in *United States* v. *Morgan*, 313 U. S. 409, 421:

> * * * That he not merely held, but expressed, strong views on matters believed by him to have been in issue, did not unfit him for exercising his duty in subsequent proceedings ordered by this Court. As well might it be argued that the judges below, who had three times heard this case, had disqualifying convictions. * * * Cabinet officers charged by Congress with adjudicatory functions are not assumed to be flabby creatures any more than judges are. Both may have an underlying philosophy in approaching a specific case. But both are assumed to be men of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances. * * *

Cf. *Federal Trade Commission* v. *Cement Institute*, 333 U. S. 683, 700–701.

The Court must make the same assumption as to members of the judiciary.

B. THE AFFIDAVIT WAS UNTIMELY

It is the duty of a trial judge not to permit an affidavit of bias or prejudice to be used as a

means of accomplishing delay and otherwise embarrassing the administration of justice. Timeliness is an indispensable statutory requirement. The statute requires such an affidavit to be filed "not less than ten days before the beginning of the term of the court, or good cause shall be shown for the failure to file it within such time." In view of the practice in the District Court for the District of Columbia of sitting in continuous session, except in the summer, with the several judges sitting in rotation or upon assignment, an applicant is not held to the ten-day requirement but he is required to file the affidavit with reasonable promptness after the disqualifying facts are known, and he must show a good cause for any delay (see R. 242). The trial judge considered the explanation for the delay in this case to be inadequate and, in his opinion, the application was made for dilatory purposes (R. 4).

The death of the brother of Mr. Isserman, one of petitioner's counsel, in the interim between May 20, when petitioner learned that Judge Holtzoff would preside, and May 29, when the affidavit was filed, might ordinarily be considered a reasonable excuse for the delay. On May 20, when he and his counsel knew definitely of Judge Holtzoff's designation, the trial was scheduled to begin within six days. Despite the obvious urgency if another judge was to be substituted, Mr. Isserman stated he would discuss the matter with co-counsel in Washington on May 23 (R. 225). Washington

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counsel appeared before Judge Holtzoff on or about May 20 and obtained an adjournment of the trial to May 27. Motions to dismiss the indictment and for a bill of particulars, which were argued before Judge Holtzoff on May 23, were denied on the same day (R. 231). Later on the same day, Mr. Isserman and co-counsel appeared before Judge Holtzoff and upon their request another adjournment of the trial, this time to June 4, was granted because of Mr. Isserman's bereavement (R. 4). At that time, they made no suggestion that the Judge was disqualified. The affidavit was filed on May 29 and the trial began on June 4 (R. 231).

At none of the appearances before Judge Holtzoff at which continuances were requested and motions argued did petitioner's counsel intimate that a change in the trial judge would be sought. Despite the immediacy of the original trial dates, they remained silent. Only after Judge Holtzoff had ruled adversely to them on the motions was the affidavit filed. Moreover, petitioner had other counsel than Mr. Isserman, including local counsel who now represent him in this Court. Indeed, the affidavit was prepared, not by Mr. Isserman, but by Mrs. King, who had participated as counsel from the beginning.

In view of these factors, we submit that the lower courts were not arbitrary in finding (R. 4, 236) that petitioner had not acted with the

requisite "due diligence." A party is not warranted in waiting until a judge has decided certain issues against him before determining whether to seek to disqualify the judge.

III

"Willfully," as Used in R. S. 102, Means Deliberately or Intentionally

The trial court charged that the term "willfully," as used in R. S. 102, meant a deliberate and intentional default, as distinguished from mere inadvertence or accident, and not necessarily that the default must be motivated by an evil or bad purpose; that petitioner's motivation was immaterial so long as his default was deliberate and intentional (R. 172). Both the majority and dissenting judges in the Court of Appeals agreed with this instruction.

Petitioner argues, however, that bad faith or a bad purpose is an essential ingredient of willfulness, and that the charge was therefore erroneous.

The word "willfully," as used in R. S. 102, has twice before been interpreted by the Court of Appeals for the District of Columbia as requiring deliberate or intentional conduct, but not necessarily an evil or bad purpose. *Fields* v. *United States*, 164 F. 2d 97, 99–100, certiorari denied, 332 U. S. 851; *Townsend* v. *United States*, 95 F. 2d 352, 357–358, certiorari denied, 303 U. S.

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664.[28] We think that the court below properly adhered to those decisions.

This Court has frequently pointed out that "willful" is a word "of many meanings, its construction often being influenced by its context." *Spies* v. *United States*, 317 U. S. 492, 497; *United States* v. *Murdock*, 290 U. S. 389, 394; *United States* v. *Illinois Central R. Co.*, 303 U. S. 239; *Screws* v. *United States*, 325 U. S. 91, 101. In the *Illinois Central* case, the Court observed (303 U. S. at 242–243):

> * * * In statutes denouncing offenses involving turpitude, "willfully" is generally used to mean with evil purpose, criminal intent or the like. But in those denouncing acts not in themselves wrong,

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[28] In the *Townsend* case the Court of Appeals stated (p. 358):

"* * * The meaning of the word depends in large measure upon the nature of the criminal act and the facts of the particular case. It is only in very few criminal cases that 'willful' means 'done with a bad purpose.' Generally, it means 'no more than that the person charged with the duty knows what he is doing. It does not mean that, in addition, he must suppose that he is breaking the law.' *American Surety Co.* v. *Sullivan*, 2 Cir., 7 F. 2d 605, 606. In *United States* v. *Edwards*, C. C., 43 F. 67 (cited by appellant) the court said: 'Willfully means with design, with some degree of deliberation.' In *Grand Trunk Ry. Co.* v. *United States*, 7 Cir., 229 F. 116, 119, the court said: 'The word "willfully," as used in the act, has a number of times engaged the attention of the courts, and has quite uniformly been held not to require an evil intent, but only that the defendant should have purposely or intentionally failed to obey the statute, having knowledge of the facts.' * * *"

> the word is often used without any such implication. Our opinion in *United States* v. *Murdock*, 290 U. S. 389, 394, shows that it often denotes that which is "intentional, or knowing, or voluntary, as distinguished from accidental," and that it is employed to characterize "conduct marked by careless disregard whether or not one has the right so to act."

Making default before a congressional committee is not an offense involving moral turpitude. A consideration of the nature of the offense, its context and demonstrate that "willfully," as used in R. S. 102, can mean no more than deliberately and intentionally.

The statute provides for punishment of persons who "willfully make default." If "willfully" meant with a bad or evil purpose, and not merely deliberately, any person who did not believe it right or lawful for a congressional committee to summon him would be completely immune from punishment. Such a witness would gain substantially complete immunity by setting up his own "good faith judgment" against that of the committee on the question of the committee's power. Congress obviously did not intend that its process be so flouted even by persons acting in good faith, for the effectiveness of its compulsory investigative power would be greatly

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impaired if such a defense were available. The type of offense under consideration and the purpose of the statute show that "willfully" here could not have meant more than deliberately and intentionally.

The *Sinclair* case, 279 U. S. 263, confirms this analysis. That case involved the second clause in R. S. 102, "refusal to answer pertinent questions." In rejecting the contention that good faith was a defense, the Court said (p. 299):

> There is no merit in appellant's contention that he is entitled to a new trial because the court excluded evidence that in refusing to answer he acted in good faith on the advice of competent counsel. The gist of the offense is refusal to answer pertinent questions. No moral turpitude is involved. Intentional violation is sufficient to constitute guilt. There was no misapprehension as to what was called for. The refusal to answer was deliberate. The facts sought were pertinent as a matter of law, and § 102 made it appellant's duty to answer. He was bound rightly to construe the statute. His mistaken view of the law is no defense. *Armour Packing Co.* v. *United States,* 209 U. S. 56, 85. *Standard Sanitary Mfg. Co.* v. *United States,* 226 U. S. 20, 49.

The clause of R. S. 102 involved in the *Sinclair* case did not contain the word "willfully." But

as the above excerpt from the opinion indicates, the phrase "refuses to answer" (not "fails to answer") in itself denotes intentional conduct. And we think it clear that Congress did not intend the two phrases in the same sentence to have totally different meanings. For there would be no basis in reason for requiring witnesses to answer questions despite their good faith reliance on advice of counsel, and yet permitting them to use the same advice as an excuse for not appearing at all, a much more serious interference with the investigatory power.

Petitioner relies on the *Murdock* case, which also involved a failure to supply information, in that case to the Bureau of Internal Revenue. But this Court held "willfully" there to include an element of bad faith largely because the informational requirement was joined in a sentence containing substantive obligations to which the requirement of willfulness also pertained. The Court said (290 U. S. at 395–396):

> Aid in arriving at the meaning of the word "willfully" may be afforded by the context in which it is used (*United States* v. *Sioux City Stock Yards Co.*, 162 Fed.

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556, 562), and, we think, in the present instance the other omissions which the statute denounces in the same sentence only if willful, aid in ascertaining the meaning as respects the offense here charged. The Revenue Acts command the citizen, where required by law or regulations, to pay the tax, to make a return, to keep records, and to supply information for computation, assessment or collection of the tax. He whose conduct is defined as criminal is one who "*willfully*" fails to pay the tax, to make a return, to keep the required records, or to supply the needed information. Congress did not intend that a person, by reason of a bona fide misunderstanding as to his liability for the tax, as to his duty to make a return, or as to the adequacy of the records he maintained, should become a criminal by his mere failure to measure up to the prescribed standard of conduct. And the requirement that the omission in these instances, must be willful, to be criminal, is persuasive that the same element is essential to the offense of failing to supply information.

The same approach to the present case shows that "willfully" has the less stringent meaning, for here the word is used in the context of the clause considered in the *Sinclair* case. As we have shown, Congress could not sensibly have intended the two clauses to have different meanings in so far as the factor of intent is concerned. And the punishment for failure to appear or testify is not coupled with substantive crimes with respect to which Congress might have wished to require the existence of an evil or bad purpose. The statute thus clearly differs from that in the *Murdock* case.

IV

There Was Adequate Proof That Petitioner Was Summoned To Testify on a Matter of Inquiry Committed to the Committee

Petitioner argues (Br. 48–53) that there was no proof that he was summoned to testify "upon matters of inquiry committed to said Committee" by the Resolution, as the indictment avers (R. 215).[29] This contention, we submit, rests upon a misunderstanding of the meaning of the statutory requirement, as embodied in the indictment.

We submit that there was sufficient evidence that petitioner was summoned to testify on a matter under inquiry before the Committee. In

[29] R. S. 102 applies to every person summoned as a witness "to give testimony * * * upon any matter under inquiry before either House * * * or any committee of either House * * *."

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the first place, the subpoena served upon petitioner called upon him to appear and testify "touching matters of inquiry committed to said Committee" (R. 23).[20] The Chairman of the Committee on Un-American Activities testified that at the times when the subpoena was served and when petitioner appeared, as well as at other times, the Committee had operated pursuant to and in accordance with the Resolution creating it (R. 13). The enabling Resolution (*supra*, pp. 3–4), of which the Court could properly take judicial notice, disclosed the nature and scope of the inquiry. The conjunction of the Resolution and the subpoena, which was admitted in evidence (R. 22), effectively disposes of petitioner's contention that the Government failed to prove that he was summoned to testify on a matter under inquiry before the Committee.

Petitioner contends that such evidence does not show that the inquiry was within the scope of the powers of Congress or the Committee's authority. But he cannot go behind the authorizing Resolution. In the present case, in view of petitioner's refusal to submit to any questioning

[20] A similar direction was used by the Senate in *McGrain* v. *Daugherty*, 273 U. S. 135 ("then and there to answer such questions pertinent to the matter under inquiry as the Senate may order the President of the Senate *pro tempore* to propound") and in *Barry* v. *United States ex rel. Cunningham*, 279 U. S. 597, 612 ("to answer such questions pertinent to the matter under inquiry as the Senate through its said committee or the President of the Senate may propound").

(except upon conditions, which he had no right to impose), he cannot now complain that the prosecution failed to show the line of inquiry which the Committee expected to follow and to prove its pertinency to the investigation. As long as there were questions which the Committee could lawfully have asked (see pp. 32–36, *supra*), we must assume that the questions which the Committee might have propounded would have been pertinent and otherwise legitimate. *McGrain* v. *Daugherty, supra,* 160.

The *Sinclair* case (279 U. S. 263) upon which petitioner relies, shows the error of his argument. In that case, Sinclair raised two questions, *inter alia,* (1) that there was no proof of any authorized inquiry, and (2) that the question propounded was not pertinent to such an inquiry. 279 U. S., at 291. The first of these points doubtless related to the clause in R. S. 102 here invoked by petitioner, the second to his refusal to answer specific questions.

As to the first point, the Court held that the evidence adequately showed that the Committee was authorized to make the inquiry. In so holding it relied entirely upon the resolutions themselves. The Court stated that (p. 295):

> Resolutions 282 and 294 were sufficient until the expiration of the Sixty-seventh Congress during which they were adopted, but it is argued that Resolution 434 was

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not effective to extend the power of the committee.

The Court then went on to analyze the terms of Resolution 434, and the relation of that Resolution to its predecessors. On the basis of this analysis, the Court concluded (p. 296): "The context and circumstances show that Resolution 294 was intended to be kept in force."

The court then held that the burden of proof as to the second point, the pertinence of the question, was on the United States, but that this burden had been satisfied. Since, in view of his refusal to be sworn, petitioner was not indicted under the portion of R. S. 102 penalizing refusal "to answer any question pertinent to the question under inquiry", this part of the *Sinclair* opinion—which petitioner quotes (Br. 51)—is not apposite here. For the Government cannot be required to prove the pertinence of any question when the petitioner has made it impossible for any question to be asked.[n]

The *Sinclair* case thus holds that reference to terms of the underlying resolution constitutes sufficient proof that the inquiry was authorized. In the instant case, there is proof that the inquiry was proceeding pursuant to the Resolution, and the Resolution itself was before the trial court.

[n] The Court held (279 U. S. at 298) that "the question of pertinency under § 102 was rightly decided by the court as one of law", and was not one for the jury to decide. This would clearly also be true as to whether the inquiry was authorized. No question is raised as to that portion of the holding here.

Unless the Resolution is held to be null and void this is sufficient.

Petitioner insists, however, that he should have been allowed to prove that the Committee (Br. 50) "had not summoned the petitioner in order to elicit any information in a matter of inquiry committed to it by Congress or in the exercise of any power given to it by Congress, but rather to harass and punish him for his political beliefs and to prevent his departure from the United States and his return to Germany."

But this is a question of the motives of the members of the Committee—for the only way petitioner could establish such ulterior purposes would be to interrogate the various Committee members as to the reason why each individual voted to subpoena petitioner. These motives are not proper matters for judicial inquiry. If an examination into such matters were allowed, every recalcitrant witness could turn his trial for contempt into a protracted trial of the motives of the Committee members. See pp. 37–40, *supra*.

We submit that Congress did not intend the phrase "upon any matter under inquiry before a committee" to open the door to any such collateral attack upon the committees themselves. Whether the summons was for a matter under inquiry was to be determined from objective facts, such as the subpoena itself and the resolution or other documents giving the Committee its powers, and, if a question is asked, from the pertinence

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of the question. This was the approach followed in the *Sinclair* case. In *Morgan* v. *United States*, 304 U. S. 1, 18, and *United States* v. *Morgan*, 313 U. S. 409, 422, this Court held "that it was not the function of the court to probe the mental processes" of the Secretary of Agriculture in reaching his conclusion. The Court declared that (313 U. S., at 422):

> But the short of the business is that the Secretary should never have been subjected to this examination. The proceeding before the Secretary "has a quality resembling that of a judicial proceeding." *Morgan* v. *United States*, 298 U. S. 468, 480. Such an examination of a judge would be destructive of judicial responsibility. We have explicitly held in this very litigation that "it was not the function of the court to probe the mental processes of the Secretary." 304 U. S. 1, 18. Just as a judge cannot be subjected to such a scrutiny, compare *Fayerweather* v. *Ritch*, 195 U. S. 276, 306–07, so the integrity of the administrative process must be equally respected. See *Chicago, B. & Q. Ry. Co.* v. *Babcock*, 204 U. S. 585, 593. It will bear repeating that although the administrative process has had a different development and pursues somewhat different ways from those of courts, they are to be deemed collaborative instrumentalities of justice and the appropriate independence of each should be respected by the other. *United States* v. *Morgan*, 307 U. S. 183, 191.

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We think the same principles are applicable to investigations conducted by congressional committees. There are even greater practical reasons why an examination of the motives, frequently different, of a number of Committee members should not be permitted.

Respect for a coordinate branch of government requires the presumption that Congress will remain within the limits of constitutionality in the procedure under which its committee conducts its investigation and in the legislation which may ensue. As Mr. Justice Holmes wisely admonished, "it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts." *Missouri, K. & T. Ry. Co.* v. *May*, 194 U. S. 267, 270. Early in our history this Court stated in *Anderson* v. *Dunn*, 6 Wheat. 204, 226:

> The idea is Utopian, that government can exist without leaving the exercise of discretion somewhere. Public security against the abuse of such discretion must rest on responsibility, and stated appeals to public approbation. Where all power is derived from the people, and public functionaries, at short intervals, deposit it at the feet of the people, to be resumed again, only at their will, individual fears may be alarmed by the monsters of imagination, but individual liberty can be in little danger.

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Chief Justice Marshall expressed a similar view in *Gibbon* v. *Ogden*, 9 Wheat. 1, 197:

> The wisdom and discretion of congress, their identity with the people, and the influence which their constituents possess at elections are, in this, as in many other instances, * * * the sole restraints on which * * * the people must often rely solely, in all representative governments.

Self-imposed limitations and political responsibility offer protection against abuse of the power of inquiry by undue interference with the right of individuals to privacy, since Congress can always withdraw power that is oppressively exercised and voters can oust abusive Congressmen. We must look, therefore, for safeguards against abuse to "the forces of responsibility which are operating from within Congress, and are generated from without." Frankfurter, *Hands off the Investigations*, 38 New Republic 329, 331.

V

Petitioner Was Not Unlawfully Denied the Right To Testify as to the Contents of His Proposed Statement

Petitioner argues that the trial court erred in refusing to let him prove that the remarks he wished to make before consenting to be sworn were objections to the legality of the proceeding (Br. 54–59). This was error, he contends, because such evidence would bear upon the question of

willfulness and because he had a constitutional right to object before testifying."

A. With respect to willfulness, the most that would be relevant would be that petitioner was seeking to assert preliminarily a legal objection, not the grounds of the objection in detail. For the only matter of significance with respect to his intention would be that he was not acting obstinately, but wished to make an objection based upon his views as to the law.

The first answer to petitioner's contention is that he was allowed to offer evidence on this point. Petitioner, in response to the question by his counsel "And what did you want to say?" testified, "Before I took the oath I wanted to make a few remarks in connection with my arrest" (R. 130); and, again, in response to a question as to why he wished to make some remarks before he would be sworn, petitioner stated: "Because

[11] Petitioner also urges in this connection that the fact that he was arrested, allegedly illegally, and brought before the Committee while in custody made it unconstitutional for the Committee to question him. But he was already under subpoena to appear at that time. The arrest by officers of the Immigration and Naturalization Service, even if, as alleged, for the purpose of bringing petitioner before the Committee and preventing his departure from the United States (R. 101–102) would not vitiate the subpoena. Nor would it be material, whether as petitioner alleges, the Committee instigated the arrest by the Service. Legislative bodies, like courts, may deter witnesses to insure their appearance. Cf. *Barry* v. *United States ex rel. Cunningham*, 279 U. S. 597, 616–619; cf. F. R. of Crim. Proc., Rule 46 (b). And the fact that such detention may not have been necessary does not free the witness from his obligation to testify.

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I had objection against the whole, what I considered unlawful proceedings of this Committee against my person" (R. 133). And petitioner's wife testified that he had "prepared a small statement, or a few remarks, if you want to, which he wanted to make to protest his illegal arrest * * * instigated by the Un-American Activities Committee" (R. 112). See also R. 77, 155–160. It is true that the trial court confined testimony concerning the proffered statement to a characterization or a summarization of its content and excluded evidence of the details (R. 134–135, 138–139). But detailed evidence in elaboration of petitioner's intended attack upon the political motivation of the Committee and the legality of petitioner's arrest would have brought before the jury matters which, as we have shown, were irrelevant.

Secondly, even if he did want to make legal objections, when the Committee ordered him to be sworn regardless, his refusal was a deliberate and intentional refusal to testify and willful within the meaning of the statute, irrespective of what he meant to say in his remarks. If any fact finding tribunal overrules a witness' objection and orders him to proceed, the witness has no right to remain obdurate. If he refuses to obey the tribunal's subsequent order deliberately and intentionally, he is acting willfully within the meaning of the statute designed to insure obedience to the tribunal's authority, even if he thinks the prior adverse ruling unlawful.

B. The first answer to the argument that petitioner had a constitutional right to object before testifying is also factual. There is no suggestion, either in the transcript of the hearing before the Committee (quoted in full, *supra*, pp. 10–12) or in the evidence at the trial, that petitioner would have been denied the right to make a legal objection if he had asked for it. The testimony of the Chairman (R. 48–49) implies that he would have been allowed to do so.

Petitioner did not even remotely suggest to the Committee that that was what he was trying to do. He first flatly refused to take the stand at all; "I am not going to take the stand" (R. 43). He then stated, "You will not swear me in before you hear a few remarks" (R. 44). And subsequent, "I want to make a few remarks, only 3 minutes, before I be sworn in, and answer your questions, and make my statement. * * * I want only 3 minutes * * * to make a statement" (R. 46–47). To which the Chairman replied: "We will give you those 3 minutes when you are sworn" (*ibid.*). But petitioner insisted, "I want to speak before I am sworn" (*ibid.*).

Although a witness may have a right at some time to make a legal objection, he has no right to condition his testimony on being allowed "to make a few remarks" or "a statement". As the Chairman testified: "But there was no legal objection in this case. He just would not be sworn. The question of legality did not enter into it. Even

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his attorney didn't say a word. * * * He should certainly, at least, attempt to make some statement as to his legal objections; but in this case there was no statement made as to his legal——" (R. 49).

It is thus clear that petitioner was not deprived by the Committee of any right to object to the legality of the proceeding. The Committee had been informed that petitioner had counsel with him (R. 43). It was not required to assume that the reiterated request to make remarks or a statement was a request to make a legal objection.

Furthermore, petitioner was not even deprived of the opportunity to make his statement, for the Chairman said that petitioner would be granted his 3 minutes when he was sworn, an offer which petitioner refused (R. 47).

The Constitution certainly does not require that a witness be allowed to make an objection before he is sworn. As long as the objection is allowed to be made before any unlawful question is required to be answered, the witness' rights are amply protected. And whether or not it was the practice of the Committee normally to allow objections to be made before witnesses were sworn, the Committee did not act arbitrarily or unreasonably in requiring petitioner to be sworn, inasmuch as petitioner never indicated that he wished to make a legal objection. The Constitution provides that "Each House may determine

the Rules of its Proceedings * * *." Art. 1, § 5, cl. 2; cf. *United States* v. *Smith*, 286 U. S. 6; *United States* v. *Ballin*, 144 U. S. 1. In authorizing the Committee to investigate, the House placed no restrictions upon its mode of examination. So long as no constitutional restraints or fundamental rights were impaired, the Committee had discretion to determine when statements of witnesses could be made. "The Committee, not the witness, must determine the procedure to be followed in such an investigation. There could be no orderly investigation otherwise, and the inquiry would break down. Irritation or pique upon the part of a witness, because his judgment upon such a point is contrary to that of the committee, constitutes no lawful reason and affords no justification for defying its process." *Townsend* v. *United States*, 95 F. 2d 352, 360 (D. C.), certiorari denied, 303 U. S. 664.

It was the Committee's prerogative to determine the time and manner of statements or remarks of witnesses lest the hearing be perverted by declarations having little relevance to the issue at hand. It has been well established since 1795 that Congressional committees are not bound to follow proceedings of courts of law in conducting investigations. Dimock, *Congressional Investigating Committees*, p. 153; cf. *People ex rel. McDonald* v. *Keeler*, 99 N. Y. 463. This case does not present such a basic absence of fair play or such an arbitrary or improvident use of power

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as will constitute a denial of due process of law. "Here the question under consideration concerns the exercise by the Senate of an indubitable power; and if judicial interference can be successfully invoked it can only be upon a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process of law. That condition we are unable to find in the present case." *Barry* v. *United States ex rel. Cunningham*, 279 U. S. 597, 620.

VI

Petitioner Received a Fair Trial

Petitioner contends that the trial judge displayed active bias and hostility toward him throughout the trial and in the sentencing (Br. 70–91). We agree, of course, that a judge's conduct of a trial should be judicial, dispassionate and impartial. But petitioner's accusation of Judge Holtzoff is unwarranted. "All too often, it seems, appellants like these become overcritical of a trial judge after conviction and on appeal seek to try him instead of the merits or demerits of their cause." *United States* v. *Breen*, 96 F. 2d 782, 784 (C. A. 2). Separate passages cut from their context and from the trial as a whole often have an apparent importance which they do not possess in their proper setting. Some of the very incidents of alleged misconduct upon which petitioner relies will serve to reveal the lack of merit in his accusation.

The judge's refusal to entertain offers of proof on certain subjects is urged by petitioner as an illustration that "he exacted retribution for fancied slights" (Pet. 19). The court carefully and repeatedly explained to counsel that no offer of proof is necessary "when a subject matter is excluded as irrelevant. An offer of proof is necessary to protect a litigant's right when the admissibility of the evidence depends on the nature of the answer. But when the entire subject matter is irrelevant, you do not need an offer of proof" (R. 109; see, also, e. g., R. 120, 134, 138, 149). This ruling, far from being an expression of hostility, is strictly in accordance with the established procedure as summarized in 1 Wigmore, *Evidence* (3d ed. 1940), § 17, p. 318: "But a specific offer of evidence is not needed where an *entire class of evidence* has been in advance formally declared inadmissible by the trial court during preliminary argument or colloquy; for the court's ruling relates forward to all possible offers of such evidence and renders them needless. Moreover, after such a ruling, the persistence of counsel in making or repeating such offers may be treated as improper attempts to get before the jury the effect of such evidence."

The latter observation is particularly germane in the case at bar. Instead of indicating hostility, the numerous adverse rulings reflect patience on the part of the judge in the face of persistent attempts to adduce irrelevant evidence

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after he had excluded identical evidence in order to confine the trial to the issues which he considered pertinent. To cite just one example, the court ruled that reliance upon advice of counsel was not a defense to the charge of willful default and, therefore, that evidence as to the advice which petitioner had received was irrelevant (e. g., R. 122). Nevertheless, counsel throughout the trial persisted in this line of inquiry, and now complains that the consequent adverse rulings (R. 126, 133, 146, 149) indicate hostility.

The trial court is charged with having "assumed the role of the prosecution and conducted a hostile cross-examination of the petitioner" (Pet. 8). An examination of the instances cited by the petitioner (Br. 81–83) will reveal that the court did not exceed proper bounds. As this Court observed in *Glasser* v. *United States,* 315 U. S. 60, 82, "the judge conducting a jury trial in a federal court is 'not a mere moderator, but is the governor of the trial for the purpose of assuring its proper conduct.'" Petitioner's criticism of the judge's participation in the case is similar to the attack of the appellant in *Simon* v. *United States,* 123 F. 2d 80, 83 (C. A. 4), certiorari denied, 314 U. S. 694, which the court rejected with a reference to the proper role of a trial judge:

> Appellant's counsel strenuously complains that the trial judge questioned the witnesses from time to time in an effort

> to bring out the facts of the case. This is precisely what he should have done. It cannot be too often repeated, or too strongly emphasized, that the function of a federal trial judge is not that of an umpire or of a moderator at a town meeting. He sits to see that justice is done in the cases heard before him; and it is his duty to see that a case on trial is presented in such way as to be understood by the jury, as well as by himself. He should not hesitate to ask questions for the purpose of developing the facts; and it is no ground of complaint that the facts so developed may hurt or help one side or the other. * * *

Petitioner complains that the trial judge continuously reprimanded and harassed defense counsel (Br. 72–81). Discretion must be conceded to a trial court in maintaining dignity and decorum. Counsel for petitioner was found by the court to be brusque and discourteous in a few instances, particularly in the manner in which he addressed the court (R. 51–52). An examination of the record reveals that such rebukes and admonitions as were administered were couched in temperate and reserved language. In the colloquy between petitioner's counsel and the court in which Mr. Isserman was warned not to speak abruptly to the court but to maintain a courteous manner, the judge expressed a desire to help counsel and acknowledged that counsel's discourtesy was not intentional (R. 52). It is, of

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course, impossible to reproduce the tone or demeanor of counsel or of the court—and it may well have been counsel's tone or manner which provoked the court. But there was no such spirited controversy between counsel and court as can be inferred to have intimidated counsel. There is no showing that petitioner was thereby prevented from introducing all the evidence that was properly available to him. Moreover, since the reprimands were administered outside of the hearing of the jury, any impression of hostility on the part of the judge toward petitioner or his counsel was carefully avoided.

The record contains many illustrations of the court's concern that petitioner's right to a fair trial be protected. In the *voir dire* examination, for example, the following colloquy occurred at the bench (R. 8):

> The COURT: If you press the question I shall ask it: "If you have read anything about Eisler, have you read anything charging him with being a foreign agent, an atomic spy, the master mind of the Communists?"
>
> Mr. ISSERMAN. I think we will withdraw that.
>
> The COURT. I am suggesting that for the defendant's protection.
>
> Mr. ISSERMAN. Your Honor's point is well taken.

Throughout the trial bench conferences were employed in order to avoid any possibility that

the jury would draw inferences unfavorable to petitioner from adverse rulings. While petitioner complains of many instances in which the court ruled adversely to him, it should not be overlooked that there were many other instances in which the court ruled adversely to the prosecution, when, in his opinion, the circumstances warranted such rulings. See, e. g., R. 49, 54, 74, 121, 123, 124, 125, 128.

We have not undertaken to discuss individually many of the over 20 items of alleged unfairness treated in petitioner's brief (pp. 70–91). We think the mere reading of most of them will show the lack of merit to petitioner's contentions. And the same is true if the record is read as a whole, as it must be to determine whether the items taken together were unfair or prejudicial.

In this case there was no substantial conflict in the evidence as to the essential points that were required to be submitted to the jury. Although the trial may not have attained the ideal of judicial decorum in which friction between counsel and court is wholly absent, no substantial prejudice to the petitioner is perceptible.

VII

Petitioner was not Immune as an Enemy Alien or an Alien in Transit from the Duty to Testify Before the Committee

A. Petitioner came to this country in June 1941, on a transit visa (R. 114). In February

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1947, about ten days after the Committee's subpoena was served upon him (R. 22), he was arrested by immigration officials under an executive warrant. The contention is now advanced (Pet. 25–26) that as an alien enemy in transit, detained in this country against his will, he was not required to appear and testify before a Congressional Committee.

The statute punishing a willful default applies without distinction to "every person" (*supra*, p. 3). The obligation to furnish legislative committees with such information and data as they are constitutionally empowered to elicit is not peculiar to citizenship, and, therefore, petitioner was no less amenable than a citizen to obey the statute. Cf. *Carlisle* v. *United States*, 16 Wall. 147. Alien enemies, even those interned, have access to our courts. *Ex parte Kawato*, 317 U. S. 69, 73. They are entitled to the constitutional guarantees of the Bill of Rights in criminal proceedings even in time of war. *Von Moltke* v. *Gillies*, 332 U. S. 708. Other privileges and opportunities were afforded petitioner during his sojourn in this country. Correlatively, alien enemies cannot hold themselves above process in private or public litigation. Oppenheim's *International Law* (Rev. 6th ed. Lauterpacht), p. 253. No authority in international law affords them an immunity from the process of our Congress. So long as they are in the United States, it is immaterial whether they are enemy aliens, or aliens

in transit, or eager to leave the country. The United States obviously has constitutional power to compel them to testify, and Congress has not manifested an intention to exempt them or anyone else from the obligation imposed by R. S. 102.

B. The argument that as an interned alien enemy, petitioner was a "prisoner of war" and, therefore, entitled under Article 5 of the Geneva Convention to refuse to answer any questions other than name, rank, and regimental number, is defective on several grounds. First, there is no showing that petitioner was "interned" as an alien enemy. Second, the term "prisoner of war" in the context of the Geneva Convention, 47 Stat. 2021, is not applicable to petitioner, who, far from being within the class of captured military personnel or those similarly situated for whom the protection of the Convention was contemplated (Dig. Op. J. A. G. (1912–1940), par. 2180a), was a civilian at liberty in this country throughout the period of hostilities. Finally, Article 5 of the Geneva Convention forbids coercion of prisoners to secure "information relative to the condition of their army or country." The protection afforded by Article 5 is clearly not germane to the inquiry for which petitioner was summoned.

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CONCLUSION

For the reasons stated, we respectfully submit that the judgment below should be affirmed.

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MARCH 1949.

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APPENDIX A

BILLS, EIGHTIETH CONGRESS, REFERRED TO COMMITTEE ON UN-AMERICAN ACTIVITIES

Number of bill	Author and date	Title	Action
H. R. 1884	Mr. Rankin, Feb. 12, 1947	To prohibit certain un-American activities	Mar. 24, 25, 26, 27, 28, 1947.—Hearings. July 21 and 22, 1947.—Hearings. No action or recommendations reported by committee.
H. R. 2122	Mr. Sheppard, Feb. 20, 1947	Prohibiting membership in subversive organizations	Mar. 24, 25, 26, 27, 28, 1947.—Hearings. July 21 and 22, 1947.—Hearings. No action or recommendations reported by committee.
H. R. 2275	Mr. Thomas, Feb. 27, 1947	To combat un-American activities by providing for forfeiture of the office or position of any Government employee whose loyalty to the United States is found to be in doubt.	Feb. 27, 1947.—Referred to House Committee on Un-American Activities. No action or recommendations reported by committee.
H. R. 2948	Mr. Dondero, Feb. 5, 1948 (Apr. 3, 1947).	To regulate and control the operation of foreign agencies acting within the United States or its Territories and dependencies.	Apr. 3, 1947.—Referred to the House Committee on the Judiciary (superseding H. R. 478). No action or consideration reported by the Committee on the Judiciary. Feb. 5, 1948.—Discharged by the House Committee on the Judiciary and referred to the House Committee on Un-American Activities.
H. R. 4422	Mr. Mundt, July 26, 1947	To provide that all members of the Communist Party and organizations controlled by it must register as agents of a foreign principal and that all printed matter distributed by such members and organizations shall be clearly labeled as being in compliance with the terms of this legislation, and for other purposes.	Dec. 3, 1947.—Considered by subcommittee on legislation. Feb. 5, 6, 9, 10, 11, 19 and 20, 1948.—Hearings. Mar. 23, 1948.—Considered by subcommittee on legislation.

H. R. 4581	Mr. McDonough, Nov. 25, 1947	To define communism and to make the practice of communism a treasonable act in the United States.	Dec. 3, 1947.—Considered by subcommittee on legislation; supersedes H. R. 99. Feb. 5, 6, 9, 10, 11, 19, and 20, 1948.—Hearings. Mar. 23, 1948.—Considered by subcommittee on legislation.
H. Res. 99	Mr. McDonough, Feb. 12, 1947	To define communism and to provide for exposure of any person adhering to or expounding the purposes and intentions of communism as an enemy of the United States.	Feb. 12, 1947.—Referred to the House Committee on the Judiciary. Mar. 20, 1947.—Discharged from House Committee on the Judiciary and referred to the House Committee on Un-American Activities; no action reported by committee; superseded by H. R. 4581.
H. R. 6554	Mr. Hollfield, May 13, 1948	To protect the United States against un-American and subversive totalitarian activities.	May 13, 1948.—Referred to the House Committee on Un-American Activities. No action or recommendations reported by committee.

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APPENDIX B

BILLS, EIGHTIETH CONGRESS, REFERRED TO OTHER COMMITTEES

Number, author, and date	Title and status
H. R. 1103—Mr. Hobbs, Jan. 20, 1947 (Judiciary).	To make it unlawful for any person to be employed in any capacity, in any department or agency of the Government of the United States created by or by virtue of an act of Congress, whose compensation is paid from funds authorized or appropriated by any act of Congress, who has engaged in activity subversive of the Government of the United States or is or has been a member of or associated with any organization, any part of the aims or purposes of which is or has been subversive to the Government of the United States. Jan. 20, 1947, introduced; Jan. 30, 1947, referred to House Committee on the Judiciary; Mar. 5, 1947, hearings held with reference to; Apr. 1, 1947, reported by subcommittee to the Committee on the Judiciary without recommendation.
H. R. 2286—Mr. Dolliver, Feb., 27, 1947 (Judiciary).	To amend the Nationality Act of 1940. Feb. 27, 1947, 1947, referred to the House Committee on the Judiciary; Feb. 28, 1947, referred to the subcommittee on immigration of the House Committee on the Judiciary; Mar. 1, 1947, report requested from the Department of Justice; June 10, 1947, report received by the subcommittee on immigration of the House Committee on the Judiciary from the Department of Justice; June 30, 1947, hearings by subcommittee on immigration of the House Committee on the Judiciary; Mar. 18, 1948 (Report No. 1378), reported with amendments; committed to the Committee of the Whole House on the State of the Union. Bill pending in House.
H. R. 2540—Mr. Dirksen, Mar. 13, 1947 (Post Office and Civil Service).	To require identification of Communist-front organizations to appear on matter sent, or caused to be sent, by or for them through the mails. Mar. 13, 1947, referred to the House Committee on Post Office and Civil Service; being considered by the committee; no action or recommendations.
H. R. 3363—Mr. Anderson, May 7, 1947 (Judiciary).	To amend sec. 2 (a) of the Alien Registration Act, 1940, with respect to certain subversive activities. May 7, 1947, referred to the House Committee on the Judiciary; May 14, 1947, report requested from Department of Justice; Dec. 16, 1947, report received from Department of Justice; no action reported by committee.
H. R. 3529—Mr. Boggs, May 20, 1947 (Judiciary).	Prohibiting members of certain subversive organizations from being members of any labor organization, and for other purposes. May 20, 1947, referred to the House Committee on the Judiciary; no action taken or recommendations reported by committee.

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Number, author, and date	Title and status
H. R. 4339—Mr. Mundt, July 23, 1947 (Judiciary).	To amend the Foreign Agents Registration Act of 1938, as amended, to require all members of the Communist Party to register under such act, to provide that all printed matter distributed by such members shall be clearly labeled, and for other purposes. July 23, 1947, referred to the House Committee on the Judiciary; no action taken or recommendations reported by committee.
H. R. 4483—Mr. Cole, Nov. 17, 1947 (House Administration).	To bar un-American parties from the election ballot. Nov. 17, 1947, referred to House Committee on House Administration. Jan. 16 and 20, 1948, hearings held; now pending before subcommittee on elections. No action taken or recommendations made by committee.
H. R. 5216—Mr. Cole, Jan. 30, 1948 (Joint Committee on Atomic Energy).	To amend the Atomic Energy Act of 1946 so as to provide that no person shall take office as a member of the Atomic Energy Commission or as General Manager of such Commission until an investigation with respect to the character, associations, and loyalty of such person shall have been made by the Federal Bureau of Investigation. Feb. 2, 1948 (Report No. 1290), committed to the Committee of the Whole House on the State of the Union and ordered to be printed. Feb. 17, 1948, put on consent calendar. May 3, 1948, called on consent calendar; by unanimous consent of the House, S. 1004, having already passed the Senate, was substituted in lieu thereof and passed by the House. Vetoed by the President. May 20, 1948, veto sustained.
H. R. 5460—Mr. McMahon, Feb. 14, 1948 (House Administration).	That the Communist Party shall not be recognized, or qualified to participate, or permitted to have the name of any candidate printed on the ballot, in the election in the United States of America. Hearings held Jan. 16 and 20 1948. No action taken or recommendations reported by the committee.
H. R. 6126—Mr. Michener, Apr. 6, 1948 (Judiciary).	To amend the Alien Registration Act of 1940. Referred to subcommittee on Immigration and Naturalization; companion bill to S. 2432; no action or recommendations reported by comm2tee.
S. 1175—Mr. Baldwin, Apr. 28, 1947 (Senate Judiciary).	To make it a crime to receive money, compensation consideration, or thing of value for advocating of the overthrow of any government in the United States Apr. 28, 1947, referred to Senate Committee on the Judiciary; pending consideration before the Subcommittee on Immigration of the Senate Committee on the Judiciary; no action taken or recommendations reported by the subcommittee or by the committee.
S. 2412—Mr. Wherry, Mar. 30, 1948 (Senate Judiciary).	To protect the people of the United States against infiltration by Communists and Communist-front organizations. No action or recommendations reported by committee.
S. 2432—Mr. Wiley, Apr. 2, 1948 (Senate Judiciary).	To amend the Alien Registration Act of 1940. Passed Senate, May 10, 1948; May 11, 1948, referred to the House Committee on the Judiciary; no action or recommendations reported by House committee.

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